

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
Nos. 14-1166 and 14-1200

MANORCARE OF KINGSTON PA,)	
LLC)	
)	
Petitioner)	
)	
v.)	
)	
)	
NATIONAL LABOR RELATIONS)	
BOARD,)	
Respondent)	
)	

PETITIONER’S MOTION FOR ATTORNEY FEES

NOW COMES ManorCare of Kingston PA, LLC, (ManorCare), and moves this Court for an award of attorney fees. This motion is made pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, (EAJA).

Introduction

On July 19, 2013, Laborers International Union of North America, Local 1310 (“Union”) filed a representation petition with the National Labor Relations Board’s Regional Director seeking to represent a unit of certified nursing assistants (CNAs) employed by ManorCare at its Kingston, Pennsylvania facility. (JA 8). The parties entered into a Stipulated Election Agreement on August 1, 2013, and on September 6, 2013, a secret ballot election was conducted. (JA 10-12). Out of

66 employees who voted, 34 voted in favor of the Union and 32 voted against union representation. (JA 9). On September 13, 2013, ManorCare filed timely objections to the election. (JA 13-14). On September 24, the Regional Director directed an evidentiary hearing to resolve these objections. (JA 15-19). The hearing was conducted on November 4 and 5, and on December 24, 2013, the Hearing Officer issued a Report and Recommendation on Objections to Election, recommending that Objection 2 be sustained and that a new election be directed. (JA 595-607). The Union subsequently filed exceptions to the Hearing Officer's Report (JA 608-611), and ManorCare filed cross-exceptions. (JA 612-614). On April 29, 2014, a three-member panel of the Board, with one member dissenting, reversed the Hearing Officer, overruled all of ManorCare's objections, and certified the Union. (JA 615-617).

ManorCare refused to recognize or bargain with the Union. (JA 637-638). On May 27, 2014, the Union filed an unfair labor practice charge (04-CA-129388) with the Board alleging an unlawful refusal to bargain. (JA 618). The Regional Director issued a Complaint and Notice of Hearing on June 3, 2014. (JA 619-621). ManorCare filed a timely Answer admitting the Union's certification, but denying the validity of the certification. (JA 622-627).

On June 16, 2014, the Board's General Counsel filed a Motion to Transfer Proceedings to the National Labor Relations Board and for Summary Judgment.

(JA 628-636). An Order to Show Cause was issued by the Board on June 17, 2014. (JA 639). Thereafter, ManorCare filed a response. (JA 640-645). On August 11, 2014, a three-member panel of the Board issued a Decision and Order finding that ManorCare had violated sections 8(a)(5) and (1) of the National Labor Relations Act, as amended, (“Act”), 29 U.S.C. §§ 158(a)(5) and (1). (JA 646-648).

ManorCare filed its petition for review in this Court on September 2, 2014. The Board subsequently filed a cross-petition seeking enforcement of its order. This Court heard oral argument on October 23, 2015. On May 20, 2016, the court issued an Opinion granting ManorCare’s petition for review regarding the election misconduct issue. The court denied ManorCare’s challenge to the issue of the Regional Director’s authority to conduct the election and granted the Board’s petition for enforcement insofar as it pertained to this issue.¹

ManorCare now moves the Court for an award of attorney fees.

ManorCare’s Entitlement To Attorney Fees

Under the EAJA, 28 U.S.C. § 2412 (d), a “prevailing party” is entitled to recover its attorney fees unless “the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” There is no question that ManorCare prevailed in this proceeding. Further,

¹ Strictly speaking, the Board’s Order finding that ManorCare had violated the Act was denied enforcement in its entirety. This Court’s Opinion, however, validated the Regional Director’s power to conduct the election.

as set forth in the affidavit of ManorCare's Administrator, [Attachment A], ManorCare qualifies as a "party" under 28 U.S.C. § 2412 (d) (2)(B)(ii) because it is a corporation, "the net worth of which did not exceed \$7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed." On June 3, 2014, when the Board complaint issued, ManorCare had a net worth of \$3,316,769 and 160 employees.

Because ManorCare qualifies as a "prevailing party," it is entitled to an award of fees unless the Government carries its "burden of proving that its position including both the underlying agency action and the arguments defending that action in court, was 'substantially justified' within the meaning of the Act." *Halverson v. Slater*, 206 F.3d 1205, 1208 (D.C. Cir. 2000). The phrase "substantially justified" does not refer to the quantity of the evidence, but instead signifies that the Government's position is "justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). "Although a frivolous Government argument is obviously neither reasonable nor substantially justified, the opposite is not necessarily true: an unreasonable—not substantially justified—argument need not be frivolous." *Halverson* at 1210. Here, the Government's position clearly lacks substantial justification. Although the "substantial justification" standard "is separate and distinct from whatever legal standards governed the merits phase of the case," *FEC v. Rose*, 806 F.2d 1081,

1087 (D.C. Cir. 1986), the reasoning of the merits panel is significant. For reasons that will become apparent, the merits panel's decision leaves no room for concluding that the Government's position was "substantially justified."

First, this is not a case in which the Government litigated a case with disputed facts. Rather, the facts were already legally determined by the Hearing Officer before the Government issued its Complaint. The facts reviewed by the Board in issuing its decision in the representation case are the identical facts reviewed by the merits panel in evaluating the reasonableness of the Board's decision to certify the Union.

Second, the governing legal standard was well established. Indeed, it was the Board's own standard, *Westwood Horizons Hotel*, 270 NLRB 802 (1984), under which the merits panel evaluated the Board's decision. Further, in reviewing the Board's decision, the panel did not engage in de novo review. Instead, it reviewed the Board's decision under a standard that gave considerable deference to the Board's evaluation:

Here, we apply our usual deferential standard, but find the Board's decision to be irreconcilable with the Board's own precedent. In that circumstance, we have no choice but to reverse.

(Slip Op. at 7).

This was not a close case. *Westwood Horizons* sets forth six factors to evaluate in determining whether third party threats rendered a free and fair election

impossible. The merits panel concluded that “the analysis of each of these six factors points to an election that fell short of the free and fair standard set out in the Board’s precedent.” (Slip Op. at 8). The panel further noted that “when the Board concluded the threatening statements here were merely jokes, it failed to follow its precedent in another way.” (Slip Op. at 11). Specifically, the Board failed to apply its objective standard, which “requires assessing the threats according to what they reasonably conveyed, not what the speakers intended to convey.” (Slip Op. at 12).

Finally, the Board had the benefit of a Hearing Officer’s Report, which did apply the *Westwood Horizons* standard to conclude that the election should be set aside. While the Board is not bound by a hearing officer’s recommendations, its cursory analysis stands in stark contrast to the Hearing Officer’s detailed analysis.

Fees Claimed

ManorCare seeks to recover only those fees incurred following the issuance of the Complaint on June 3, 2014, and only those fees related to litigating this case before the Board and this Court. ManorCare does not seek to recover fees relating to litigating its Election Objections before the Board. Also, the Supreme Court has recognized that “[w]here the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983). Because ManorCare did not prevail on the

distinct secondary issue related to the Regional Director's power to conduct the election, ManorCare has excluded fees related to litigation of this issue.

ManorCare, however, does seek to recover its fees incurred in preparing this motion for attorney fees. It is well settled that a prevailing party may recover the reasonable fees associated with litigating its request for fees. *Commissioner, INS v. Jean*, 496 U.S. 154, 162 (1990).

The fees requested are supported by the affidavits of ManorCare's counsel, Clifford Nelson and Charles Roberts, and the supporting documentation.

[Attachments B and C]. As reflected therein, the fees requested are imminently reasonable.

Under the EAJA, fees are capped at \$125 per hour "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. 2412 (d)(2)(A). This Court has an established practice of adjusting the cap based on increases in the Consumer Price Index (CPI). *Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 969 (D.C. Cir. 2004) (adjusting rate to \$143.25 per hour based on 14.6% increase in CPI since 1996, when Congress set the statutory cap). In *Haselwander v. McHugh*, 797 F.3d 1, 3-4 (D.C. Cir. 2015), this Court utilized this methodology to determine that the cap should be

adjusted to \$193.75 for 2014. Based on this methodology, the rate for 2015 would also be \$193.75 ($\$155.35/100 \times \125).

Below is a chart summarizing the fees that ManorCare seeks to recover:

Task	Actual Hours	Hours Excluded (Regional Director's Authority)	Hours Claimed	Actual Rate	EAJA Rate	Total
NLRB Litigation June 2014	(CHN) 4.9	 1.1	3.8	\$345	\$193.75	\$736.25
	(CPR) 5.6	5% = 0.3	5.3	\$345	\$193.75	\$1,026.88
Petition for Review and Initial Filings August – October 2014	(CHN) 6.3	 0	6.3	\$345	\$193.75	\$1,220.63
	(CPR) 10.2	 3.1	7.1	\$345	\$193.75	\$1,375.63
Joint Appendix/ Opening Brief November – January 2015	3.1 (CHN)	5% = 0.2	2.9	\$350	\$193.75	\$561.88

	(CPR)	15% =	22	\$350	\$193.75	\$4,262.50
	25.9	3.9				
Reply Brief	(CHN)	65% =	0.6	\$350	\$193.75	\$116.25
February 2015	1.8	1.2				
	(CPR)	65% =	7.8	\$350	\$193.75	\$1,511.25
	22.3	14.5				
Rule 28 (j) Letter	(CHN)		0.0	\$350	\$193.75	\$0
September 2015	0.9	0.9				
	(CPR)		0.0	\$350	\$193.75	\$0
	8.5	8.5				
Oral Argument	(CHN)	20% =	9.8	\$350	\$193.75	\$1898.75
September/ October 2015	12.3	2.5				
	(CPR)	30% =	22.4	\$350	\$193.75	\$4,340
	32	9.6				
Rule 28(j) Letter	(CHN)		0.0	\$360	\$193.75	\$0
April/May 2016	1.2	1.2				

	(CPR)		0.0	\$360	\$193.75	\$0
	4.0	4.0				
May -June 2016 Review Court Decision/ Motion for Attorney Fees	(CHN)	0.0	0.7	\$360	\$193.75	\$135.63
	0.7					
	(CPR)	0.0	15.4	\$360	\$193.75	\$2983.75
	15.4					
Total						20,169.40

CONCLUSION

ManorCare respectfully requests that this Court grant this motion and award ManorCare attorney fees in the amount of \$20,169.40 under the EAJA.

Dated this 20th day of June 2016.

/s/ Charles P. Roberts III

Constangy, Brooks, Smith & Prophete LLP
 Suite 300, 100 N. Cherry Street
 Winston-Salem, NC 27101
 Telephone: 336-721-6852
 Facsimile: 336 748-9112
croberts@constangy.com

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2016, I electronically filed the foregoing MOTION with the Clerk of Court for the United States Court of Appeals for the D.C. Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Charles P. Roberts III

ATTACHMENT A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
Nos. 14-1166 and 14-1200

MANORCARE OF KINGSTON PA,)
LLC)
)
Petitioner)
)
i.)
)
NATIONAL LABOR RELATIONS)
BOARD,)
Respondent)
)

AFFIDAVIT OF ROBERT NEALON

NOW COMES Robert Nealon, who swears under oath as follows:

1. I am the Administrator for ManorCare of Kingston PA, LLC
 ("ManorCare") located at 200 2nd Avenue in Kingston, Pennsylvania. My
 duties include overall responsibility for the operation of this nursing
 home.
2. As part of my duties, I am familiar with the financial and operating
 statements for ManorCare. I was requested to review, and did review, the
 financial and operating statements for ManorCare for the time period
 covering June 3, 2014, which was the date on which the National Labor
 Relations Board issued a Complaint alleging that ManorCare had
 engaged in certain unfair labor practices.

3. Based upon my review of the financial and operating statements, I can attest that as of June 3, 2014, ManorCare had 160 employees and a net worth (assets less liabilities) of \$3,316,769.

I swear under oath that the statements made herein are true and correct and based upon my personal knowledge except as otherwise indicated.

Dated this 17th day of June 2016.

A handwritten signature in black ink, appearing to read 'Robert Nealon', with a long horizontal flourish extending to the right.

Robert Nealon -- Administrator

ATTACHMENT B

3. Once the unfair labor practice proceeding reached the Board, I was assisted by my partner Charles P. Roberts III. Mr. Roberts has practiced before the NLRB and the federal courts for 37 years. During that time, he has briefed and argued more than 50 appeals in the federal courts of appeal, including a number of cases before this Court.
4. Throughout our firm's representation of ManorCare, we staffed the case in a lean fashion, with no duplication of efforts and in the most efficient and effective manner. Mr. Roberts took the lead in preparing and presenting the Company's arguments to the Board and in preparing and presenting the briefs and arguments to this Court. I reviewed the briefs, made suggestions regarding arguments, communicated with the client, and assisted Mr. Roberts in preparing for oral argument before this Court.
5. Attached hereto are the actual invoices that our firm submitted for this matter. I have redacted any entries that are unrelated to the relevant proceedings before the NLRB and this Court. Further, the rates that we charged for this matter were substantially below the standard rates that Mr. Roberts and I normally charge based on our extensive experience in this specialized area of law. Based on my knowledge of the rates that other labor law firms charge, I can attest that the rates we charged for this matter were extremely competitive and reasonable.

6. I have reviewed the attached invoices and attest that they represent the actual time reasonably expended and fees billed in defending ManorCare before the NLRB and this Court. The billing record for June, which will not be sent out until July 2016, only covers time through June 19, 2016.
7. In seeking to recover attorney fees, however, we have excluded from our request any time devoted to presenting arguments to either the Board or this Court regarding the Regional Director's authority to conduct the election, as this was an issue on which the Company did not prevail.
8. In recording the time I spent on certain tasks such as reviewing and editing the Company's briefs and preparing for oral argument, I did not differentiate between time spent on one issue and time spent on the other issue. Nevertheless, I have reviewed the briefs and time records and am able to closely estimate the percent of time spent on each issue. This estimate is based on the relative lengths of the arguments in the briefs, the complexity of the issues, and my recollection. My best estimate, which I believe to be very accurate, is that my time was divided as follows:

Task	Substantive Issue	Procedural Issue
NLRB Litigation	3.8 hours	1.1 hour
Petition for Review/	6.3 hours	0 hours

Initial Filings		
Joint Appendix/ Opening Brief	95%	5%
Reply Brief	35%	65%
September 2015 Rule 28(j) Letter	0 hours	0.9 hours
Oral Argument	80%	20%
May 2016 Rule 28(j) Letter	0 hours	1.2 hours
Motion for Attorney Fees	100%	0%

I have read this affidavit and state that it is true and correct and is based on my personal knowledge.

Dated this 20th day of June 2016.

/s/ Clifford H. Nelson

CONSTANGY, BROOKS & SMITH, LLP

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ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955

Tax ID # 58-0616335

HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086

Invoice Number	395753
Invoice Date	07/03/2014
Client Number	07580
Matter Number	61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH JUNE 30, 2014

REGARDING: MCHS-KINGSTON - R CASE PETITION
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]					
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	[REDACTED]					
	[REDACTED]					
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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	[REDACTED]					
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	[REDACTED]					

07580 HCR MANOR CARE
61223 MCHS-KINGSTON - R CASE PETITION
REFERENCE NO.: M20661378

Invoice Date 07/03/2014

Invoice Number 395753

Page Number 3

06/05/14	CLIFF H. NELSON	P250	A104	.30	345.00	\$103.50
Review complaint issued by Region 4.						
06/05/14	CLIFF H. NELSON	P250	A106	.10	345.00	\$34.50
Prepare correspondence to client regarding complaint issued by Region 4.						

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Invoice Date 07/03/2014

Invoice Number 395753

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(Appeal) Work on preparing answer to the NLRB complaint.

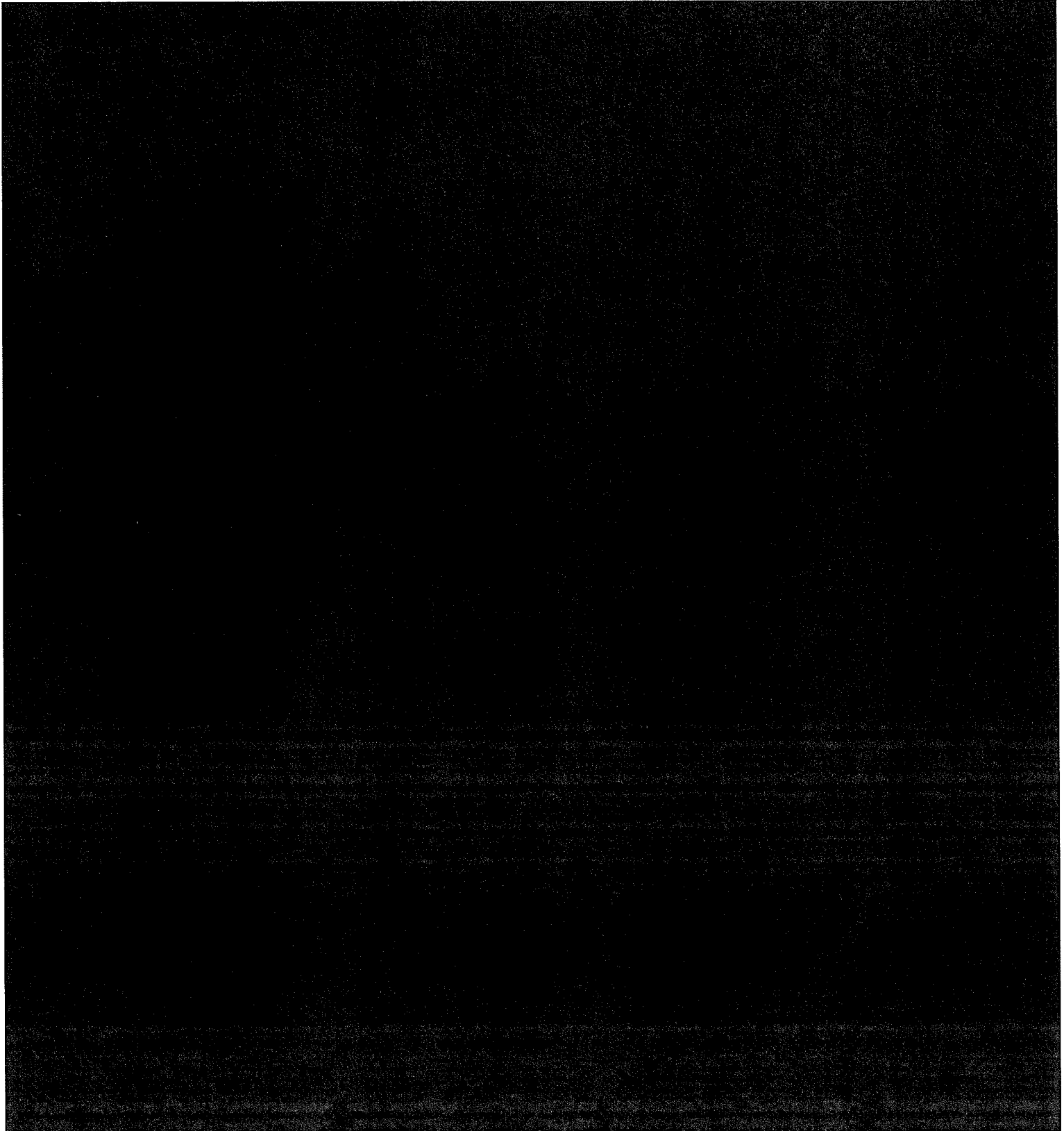
06/08/14	CHARLES P ROBERTS,III	P250	A103	.60	345.00	\$207.00
Reviewed and revised Answer to Complaint.						
06/09/14	CLIFF H. NELSON	P250	A104	.30	345.00	\$103.50
Review suggested revisions and finalize answer to unfair labor practice complaint.						

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REFERENCE NO.: M20661378

Invoice Date 07/03/2014

Invoice Number 395753

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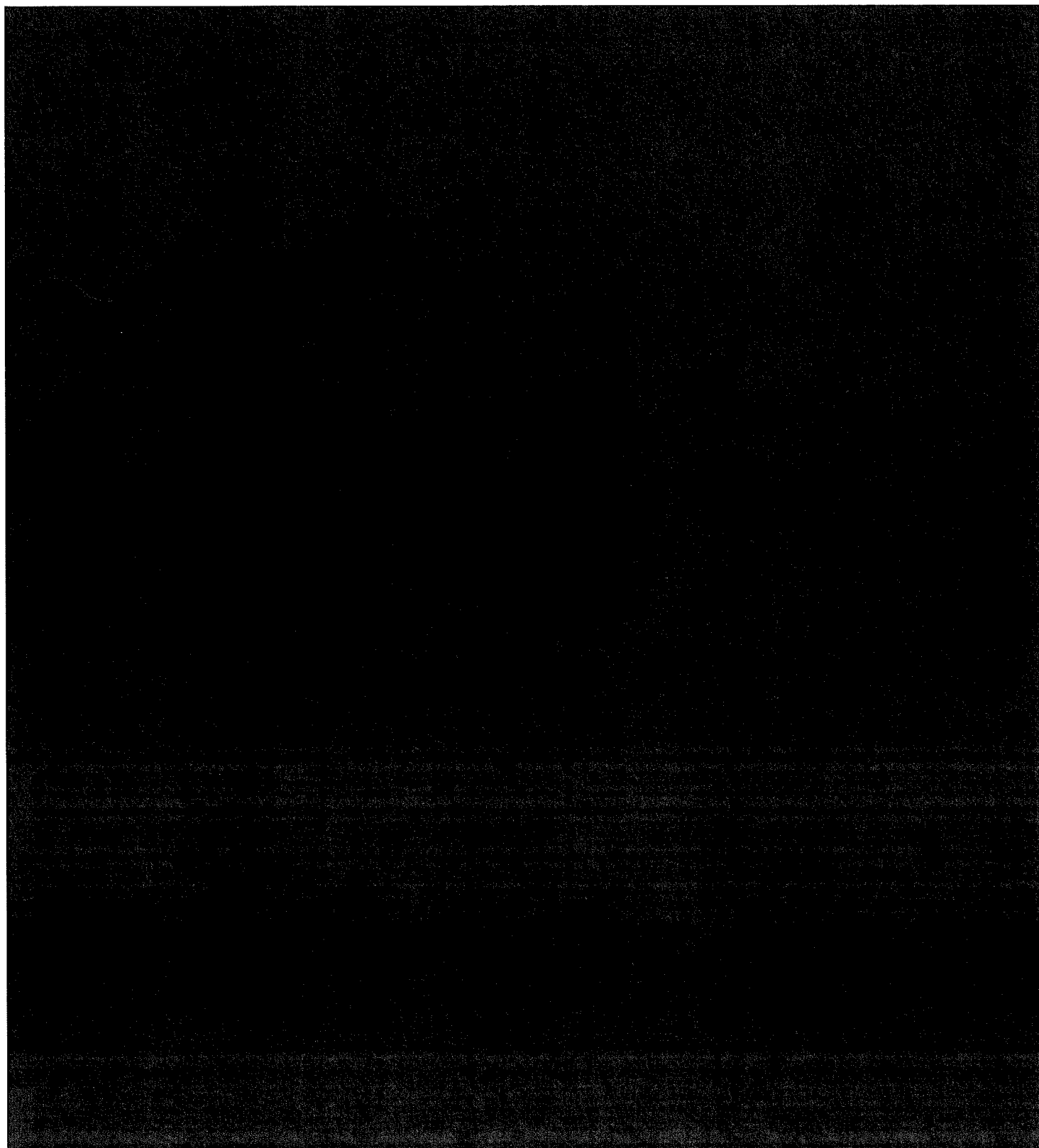


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Invoice Date 07/03/2014

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61223 MCHS-KINGSTON - R CASE PETITION
REFERENCE NO.: M20661378

Invoice Date 07/03/2014

Invoice Number 395753

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06/19/14 CLIFF H. NELSON P250 A104 .10 345.00 \$34.50
Review Order and Notice to Show Cause.

06/19/14 CLIFF H. NELSON P250 A106 .10 345.00 \$34.50
Prepare correspondence to client regarding Order and Notice to Show Cause.

06/20/14 CLIFF H. NELSON P250 A104 .20 345.00 \$69.00
Work on appeal of election objections.

06/20/14 CLIFF H. NELSON P250 A104 .10 345.00 \$34.50
Further consideration of Order transferring our case to the Board.

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61223 MCHS-KINGSTON - R CASE PETITION
REFERENCE NO.: M20661378

Invoice Date 07/03/2014

Invoice Number 395753

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06/26/14	CHARLES P ROBERTS,III	P250	A104	.30	345.00	\$103.50
	Reviewed motion for summary judgment and planned response.					
06/26/14	CLIFF H. NELSON	P250	A104	.30	345.00	\$103.50
Excluded	Review Noel Canning decision to determine impact on appeal.					
06/27/14	CHARLES P ROBERTS,III	P250	A103	2.00	345.00	\$690.00
	Drafted response to Board's notice to show cause and to General Counsel's motion for summary judgment.					
06/27/14	CLIFF H. NELSON	P250	A104	.80	345.00	\$276.00
Excluded	Work on response to Motion for Summary Judgment in light of recent SC decision.					
06/27/14	CLIFF H. NELSON	P250	A104	1.20	345.00	\$414.00
	Research procedural issues and precedent relating to "joke" threats.					

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REFERENCE NO.: M20661378

Invoice Date 07/03/2014

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06/30/14 CHARLES P ROBERTS,III P250 A103 2.70 345.00 \$931.50
Continued drafting and revising of response to motion for summary judgment.

06/30/14 CLIFF H. NELSON P250 A104 .40 345.00 \$138.00
Work on reply to motion for summary judgment in "joke threats" case.

06/30/14 CLIFF H. NELSON P250 A104 .20 345.00 \$69.00
(Refuse to Bargain) Review final draft of reply to motion.

06/30/14 CLIFF H. NELSON P250 A106 .20 345.00 \$69.00
Prepare correspondence to client regarding response filed to motion for summary judgment.

CONSTANGY, BROOKS & SMITH, LLP

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Tax ID # 58-0616335

HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086

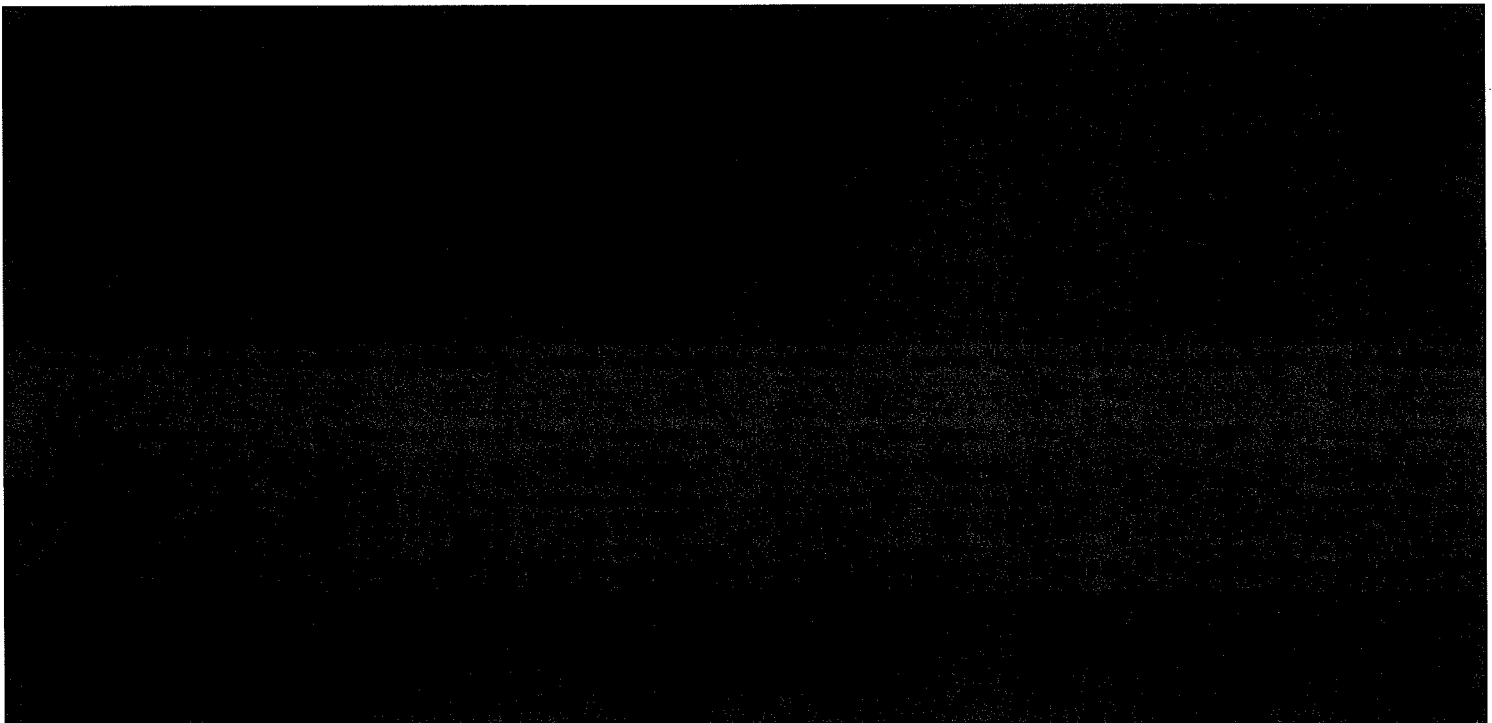
Invoice Number 400171
Invoice Date 09/10/2014
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH AUGUST 31, 2014

REGARDING: MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
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ALABAMA CALIFORNIA FLORIDA GEORGIA ILLINOIS MASSACHUSETTS MISSOURI NEW JERSEY
NORTH CAROLINA SOUTH CAROLINA TENNESSEE TEXAS VIRGINIA WISCONSIN

07580 HCR MANOR CARE

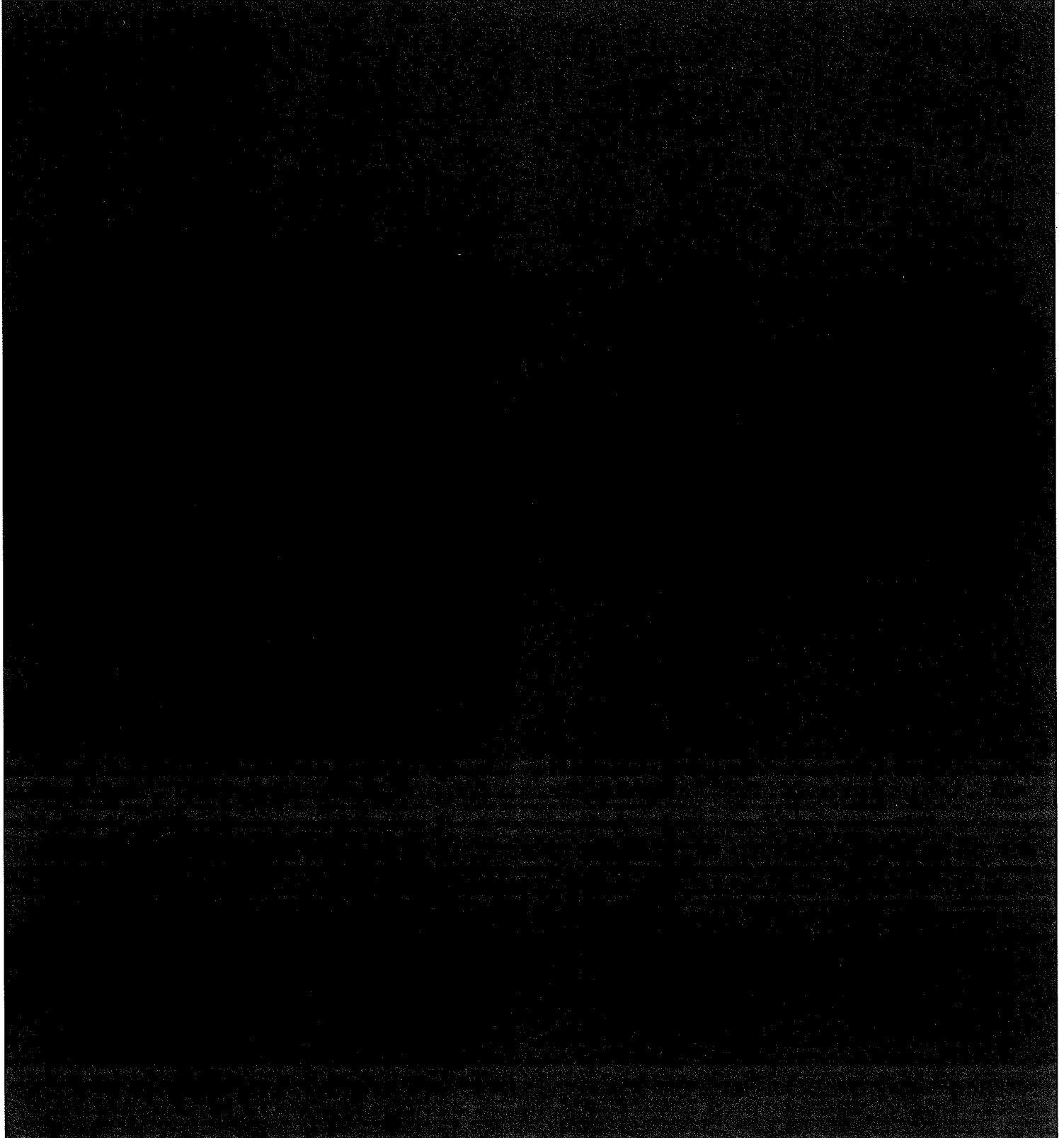
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

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REFERENCE NO.: M20661378

Invoice Date 09/10/2014

Invoice Number 400171

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08/12/14	CLIFF H. NELSON	P250	A104	.20	345.00	\$69.00
Review Board decision on motion for summary judgment in R case enforcement action.						
08/12/14	CLIFF H. NELSON	P250	A106	.20	345.00	\$69.00
Prepare correspondence to client regarding Board decision on motion for summary judgment in R case enforcement action.						

07580 HCR MANOR CARE

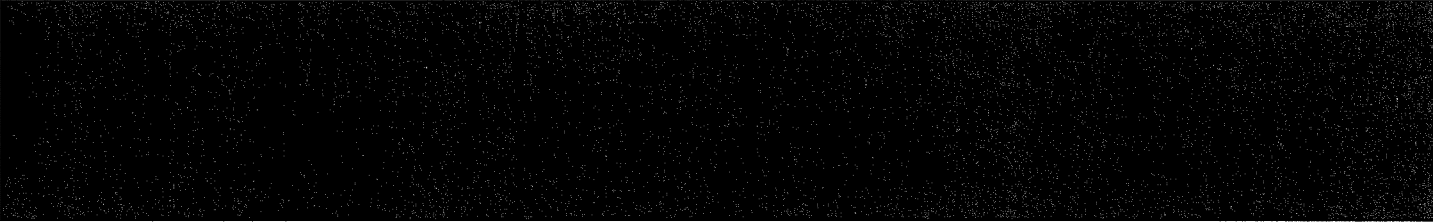
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378



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08/15/14	CLIFF H. NELSON	P250	A104	.30	345.00	\$103.50
	Consider options for appeal.					
08/15/14	CLIFF H. NELSON	P250	A104	1.20	345.00	\$414.00
	Research best circuits for our case.					



07580 HCR MANOR CARE

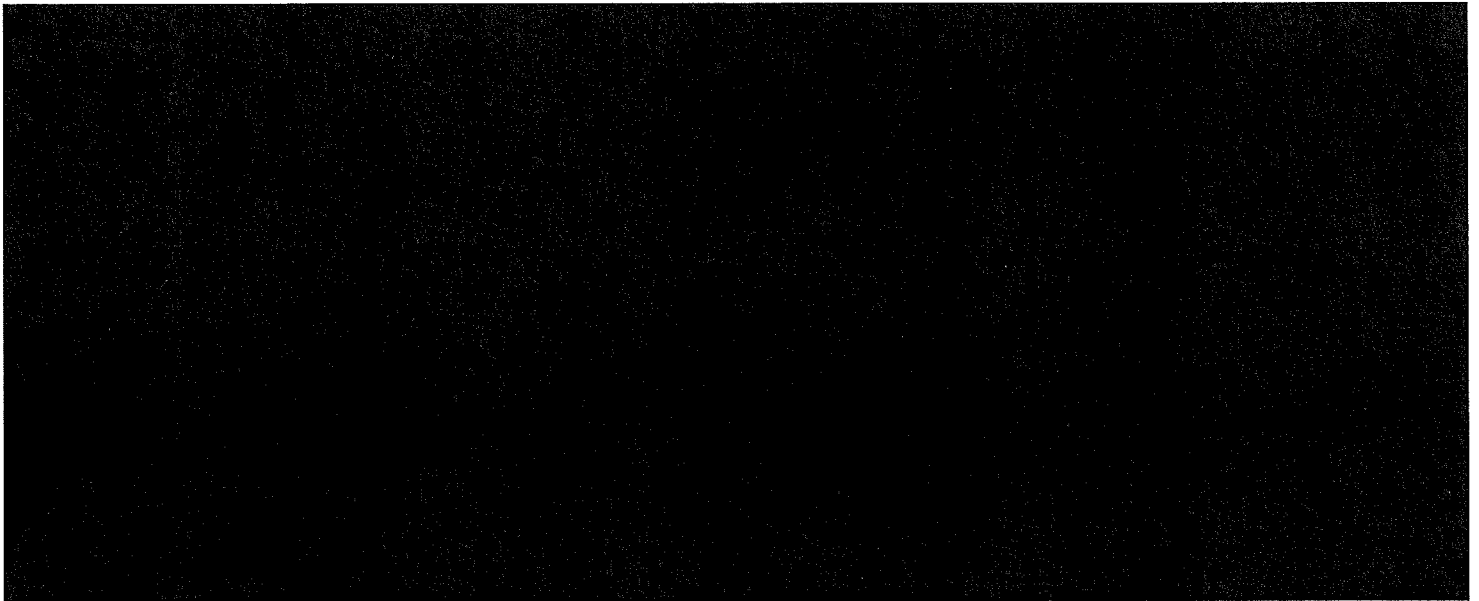
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REFERENCE NO.: M20661378

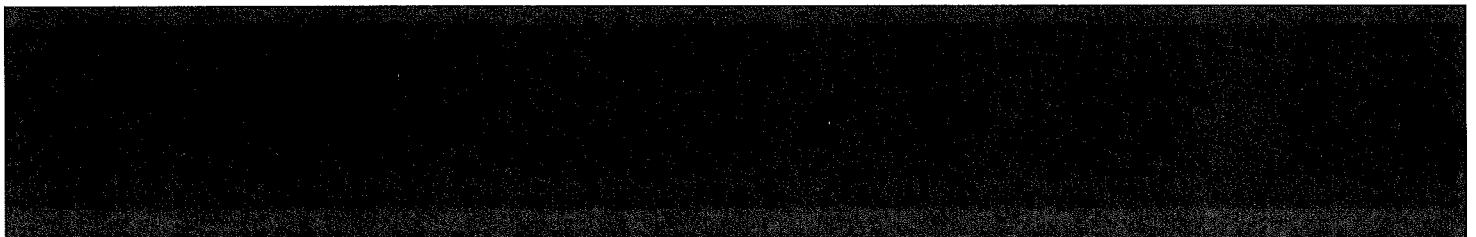
Invoice Date 09/10/2014

Invoice Number 400171

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08/22/14	CHARLES P ROBERTS,III	L210	A103	.70	345.00	\$241.50
	Draft petition for review to court of appeals					
08/22/14	CLIFF H. NELSON	P250	A104	.10	345.00	\$34.50
	Review bargaining request from union.					
08/22/14	CLIFF H. NELSON	P250	A108	.40	345.00	\$138.00
	Prepare response to bargaining request from union.					
08/22/14	CLIFF H. NELSON	P250	A104	.50	345.00	\$172.50
	Work on appeal.					
08/26/14	CHARLES P ROBERTS,III	P250	A103	.40	345.00	\$138.00
	Continued drafting of petition for review of NLRB decision					
08/26/14	CLIFF H. NELSON	P250	A104	.40	345.00	\$138.00
	Work on petition for review.					



07580 HCR MANOR CARE

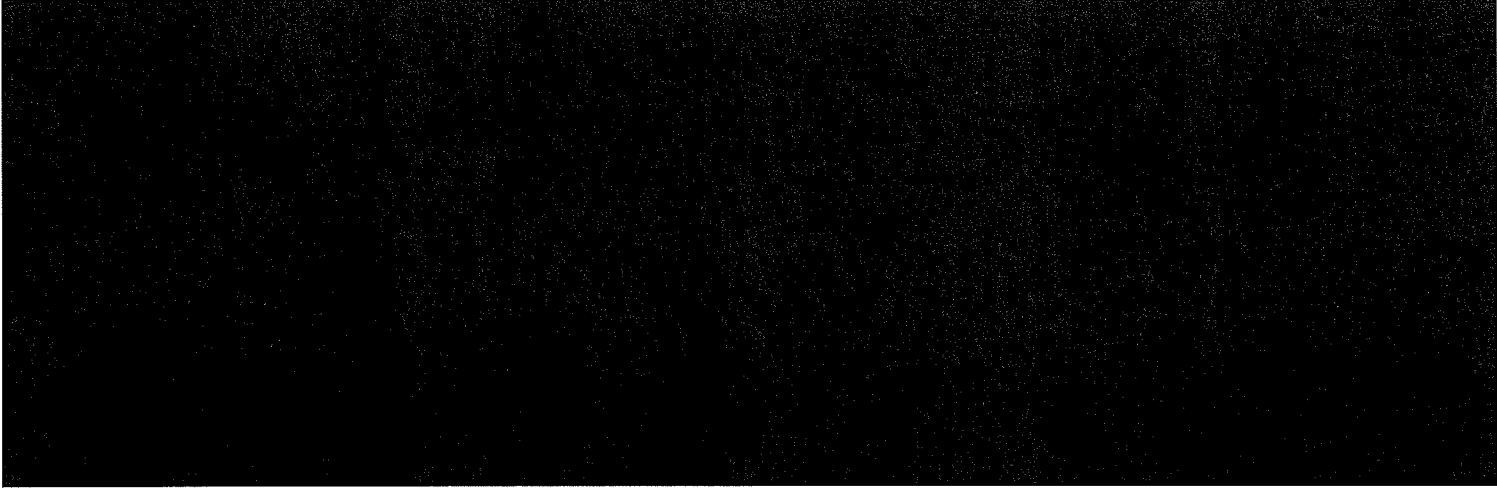
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08/27/14	CHARLES P ROBERTS,III	P250	A103	.60	345.00	\$207.00
	Revised and finalized petition for review					



08/27/14	CLIFF H. NELSON	P250	A104	.20	345.00	\$69.00
	Review Petition for Review prior to filing.					



CONSTANGY, BROOKS & SMITH, LLPBILLING DEPARTMENT
P. O. BOX 102476

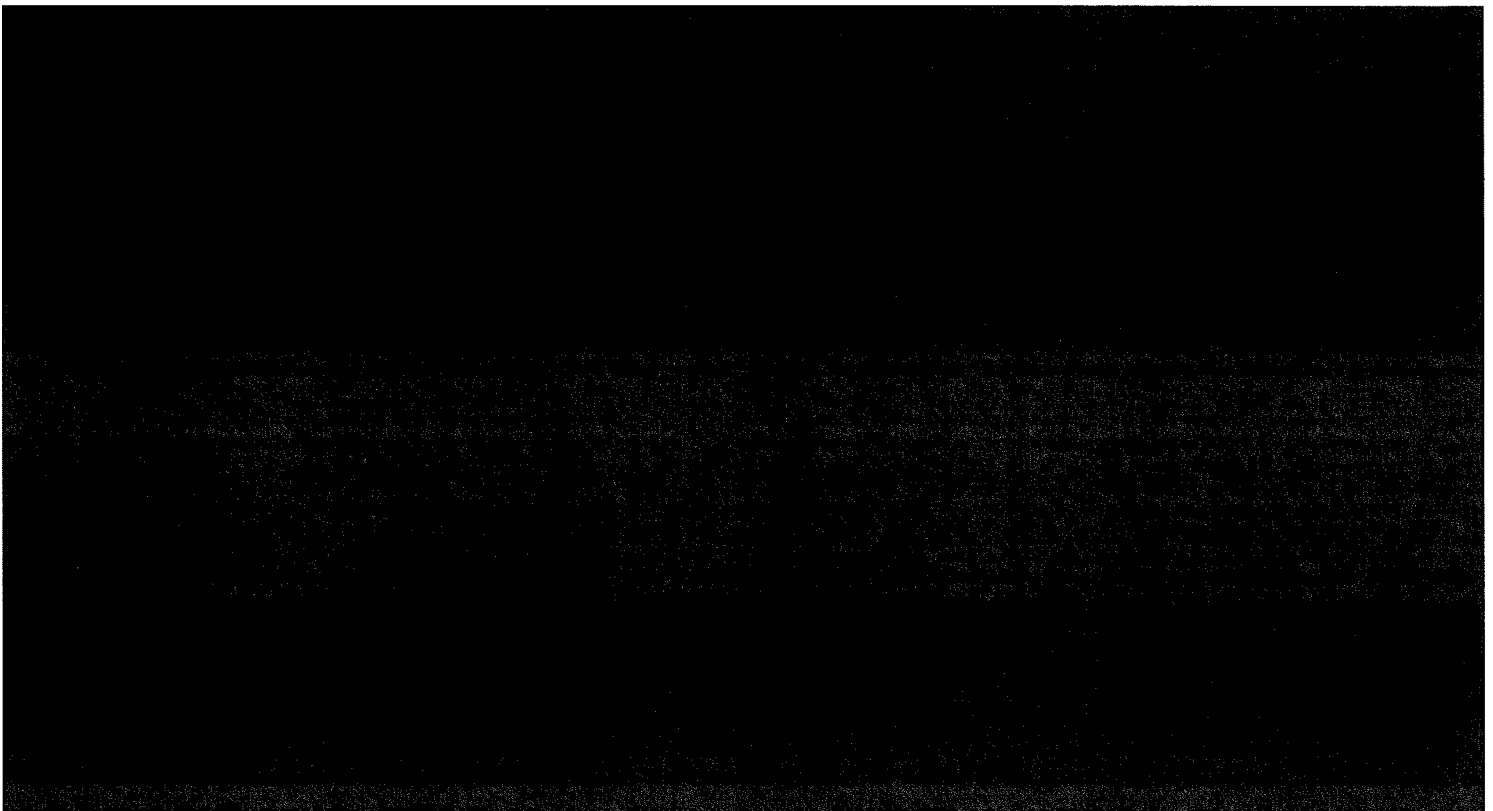
ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955
TaxID #58-0616335HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086**Invoice Number** 401945
Invoice Date 10/03/2014
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2014REGARDING: MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
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ALABAMA	CALIFORNIA	FLORIDA	GEORGIA	ILLINOIS	MASSACHUSETTS	MISSOURI	NEW JERSEY
	NORTH CAROLINA	SOUTH CAROLINA	TENNESSEE	TEXAS	VIRGINIA	WISCONSIN	

07580 HCR MANOR CARE

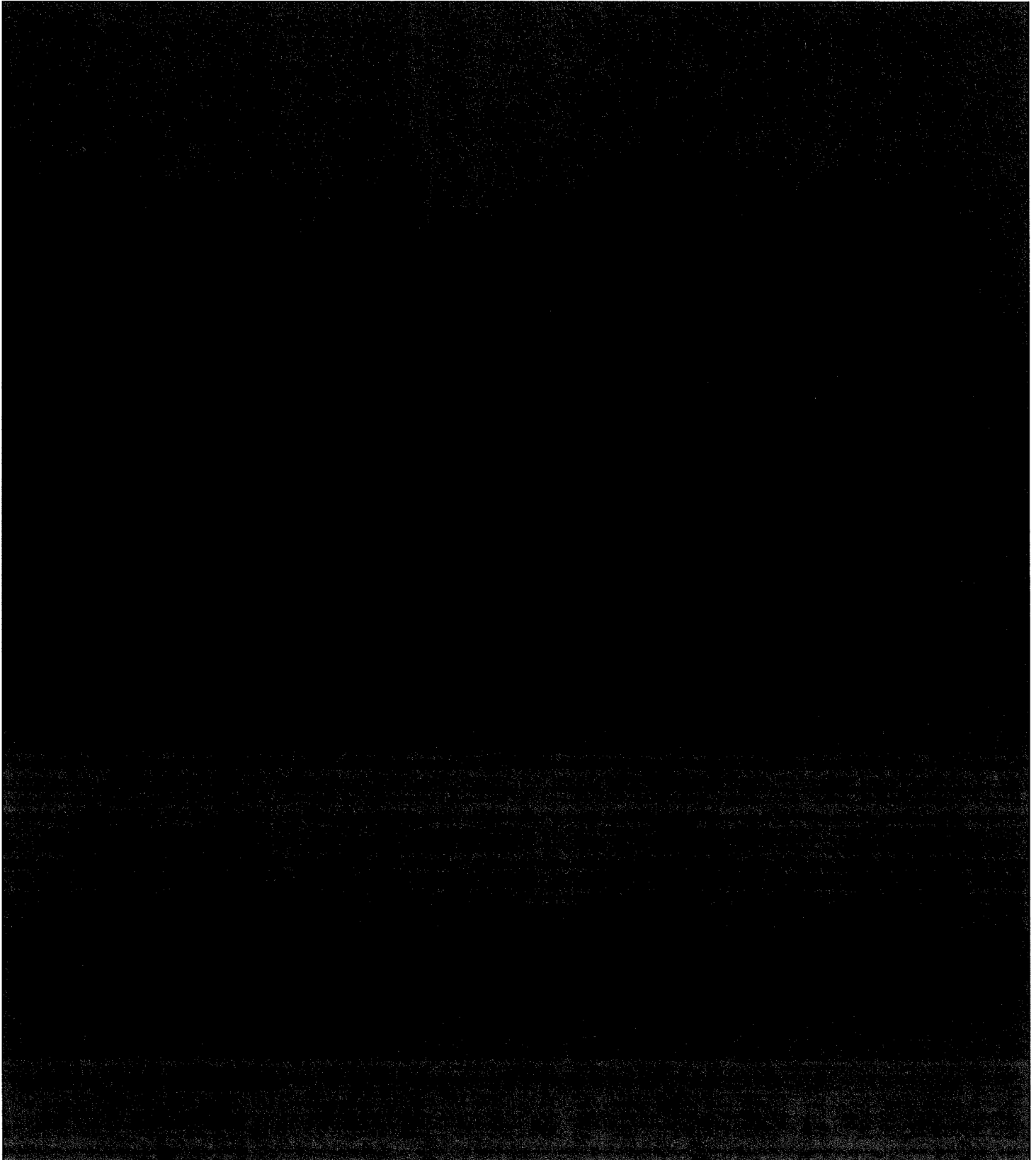
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 10/03/2014

Invoice Number 401945

Page Number 3



07580 HCR MANOR CARE

61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 10/03/2014

Invoice Number 401945

Page Number 4

09/15/14	CHARLES P ROBERTS,III	P250	A104	.30	345.00	\$103.50
Reviewed court's order setting forth schedule for submission of docketing statement and other initial filing requirements						
09/15/14	CLIFF H. NELSON	P250	A104	.20	345.00	\$69.00
Review docketing order and submission deadlines received from DC Circuit.						
09/15/14	CLIFF H. NELSON	P250	A106	.10	345.00	\$34.50
Prepare correspondence to client regarding docketing order and submission deadlines received from DC Circuit.						

07580 HCR MANOR CARE

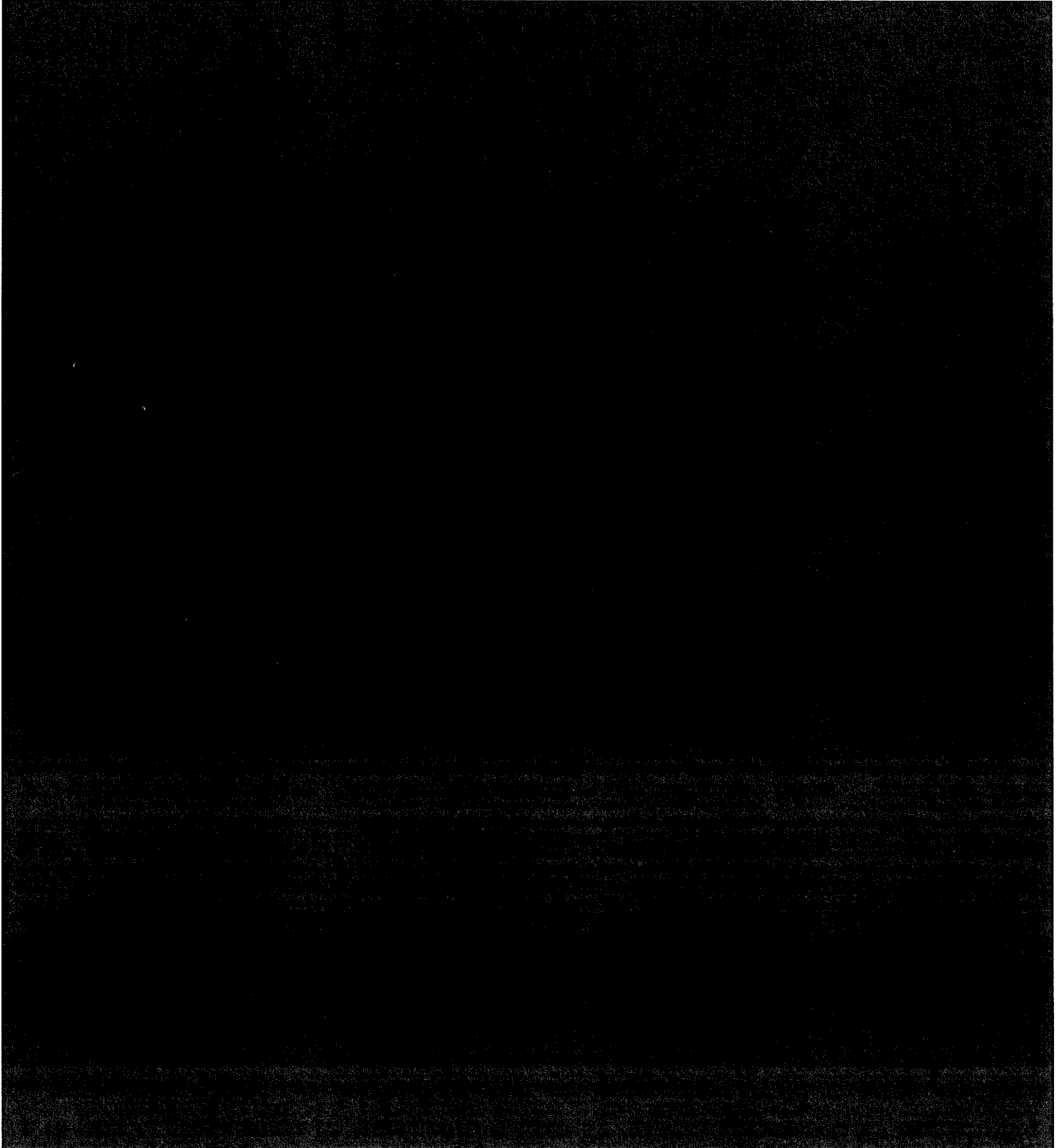
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 10/03/2014

Invoice Number 401945

Page Number 5



07580 HCR MANOR CARE

61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 10/03/2014

Invoice Number 401945

Page Number 6

09/26/14

CLIFF H. NELSON

P250

A103

.50

345.00

\$172.50

Work on brief to DC Circuit.

CONSTANGY, BROOKS & SMITH, LLP

BILLING DEPARTMENT

P. O. BOX 102476

ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955

Tax ID # 58-0616335

HCR MANOR CARE

ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.

P.O. BOX 10086

TOLEDO, OH 43699-0086

Invoice Number 404217**Invoice Date 11/07/2014**

Client Number 07580

Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH OCTOBER 31, 2014

REGARDING: MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
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10/03/14	CHARLES P ROBERTS,III	P250	A103	1.50	345.00	\$517.50
Drafted docketing statement, statement of standing, certificate of parties, and corporate disclosure statement.						

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 11/07/2014

Invoice Number 404217

Page Number 3

10/03/14	CLIFF H. NELSON	P250	A104	.30	345.00	\$103.50
Work on issues surrounding appeal of R case before DC Circuit.						
10/06/14	CHARLES P ROBERTS,III	P250	A104	2.00	345.00	\$690.00
Excluded	Legal review of case law supporting argument that Board could not retroactively ratify prior unlawful actions.					
10/07/14	CHARLES P ROBERTS,III	P250	A103	1.20	345.00	\$414.00
Drafted statement of issues to be presented to court.						
10/07/14	CHARLES P ROBERTS,III	P250	A103	1.10	345.00	\$379.50
Excluded	Drafted outline of argument regarding improper appointment of regional director.					
10/07/14	CLIFF H. NELSON	P250	A104	.40	345.00	\$138.00
Review documents prior to submission to DC Circuit.						
10/08/14	CHARLES P ROBERTS,III	P250	A103	2.00	345.00	\$690.00
Revised and filed docketing statement, statement of issues, statement regarding use of deferred appendix, statement re underlying decisions, and provisional certificate of parties.						
10/08/14	CLIFF H. NELSON	P250	A104	.20	345.00	\$69.00
Review Labor Board decision in R Case.						
10/08/14	CLIFF H. NELSON	P250	A103	.40	345.00	\$138.00
Revise Statement of Issues for submission to the DC Circuit Court of Appeals.						

10/09/14	CLIFF H. NELSON	P250	A106	.20	345.00	\$69.00
Prepare correspondence to client regarding pleadings and documents filed with the DC Circuit.						

07580 HCR MANOR CARE

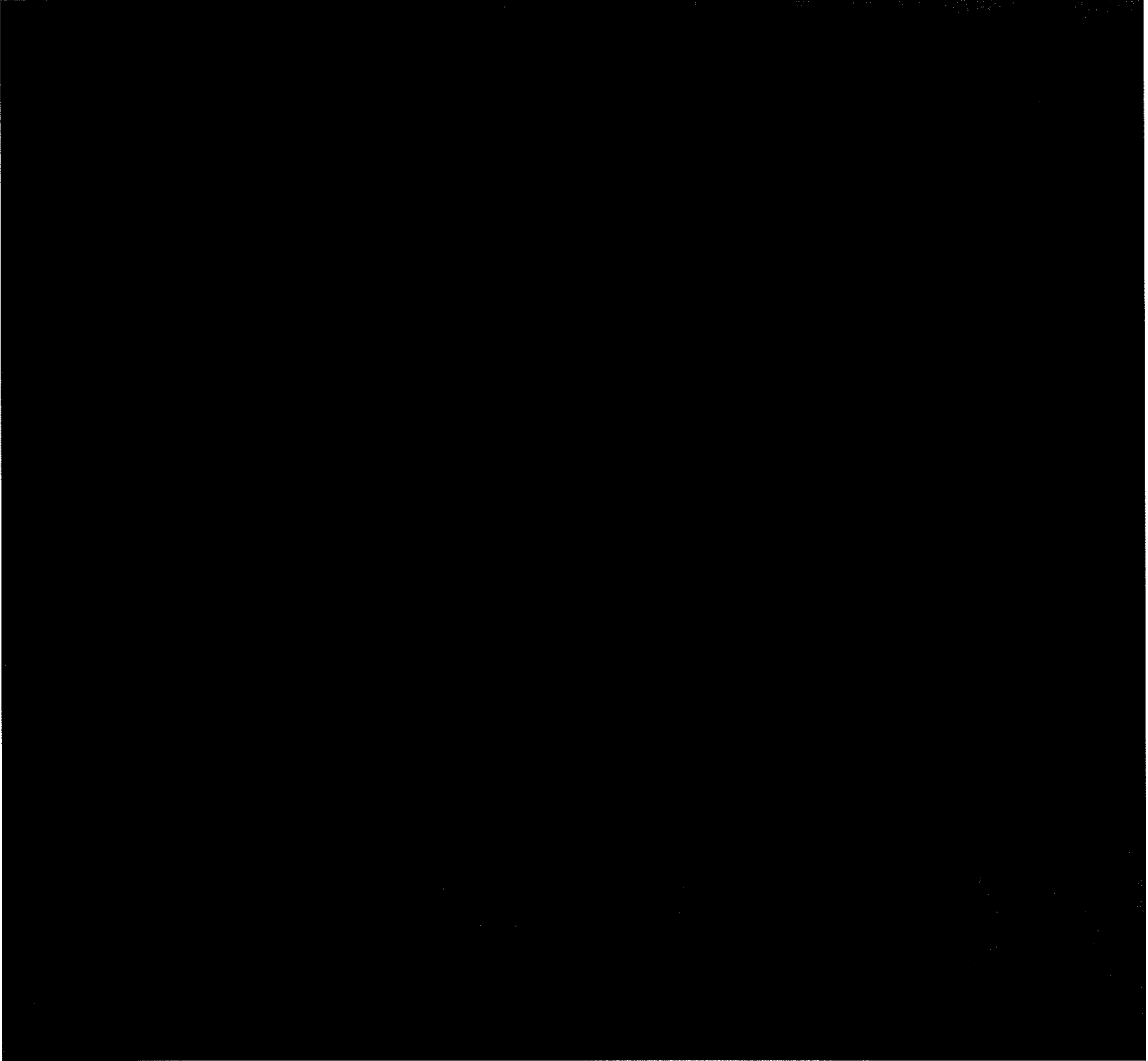
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 11/07/2014

Invoice Number 404217

Page Number 4



10/20/14	CLIFF H. NELSON	P250	A104	.30	345.00	\$103.50
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Review pleadings issued by DC Circuit and Cross Application for appeal by NLRB.

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

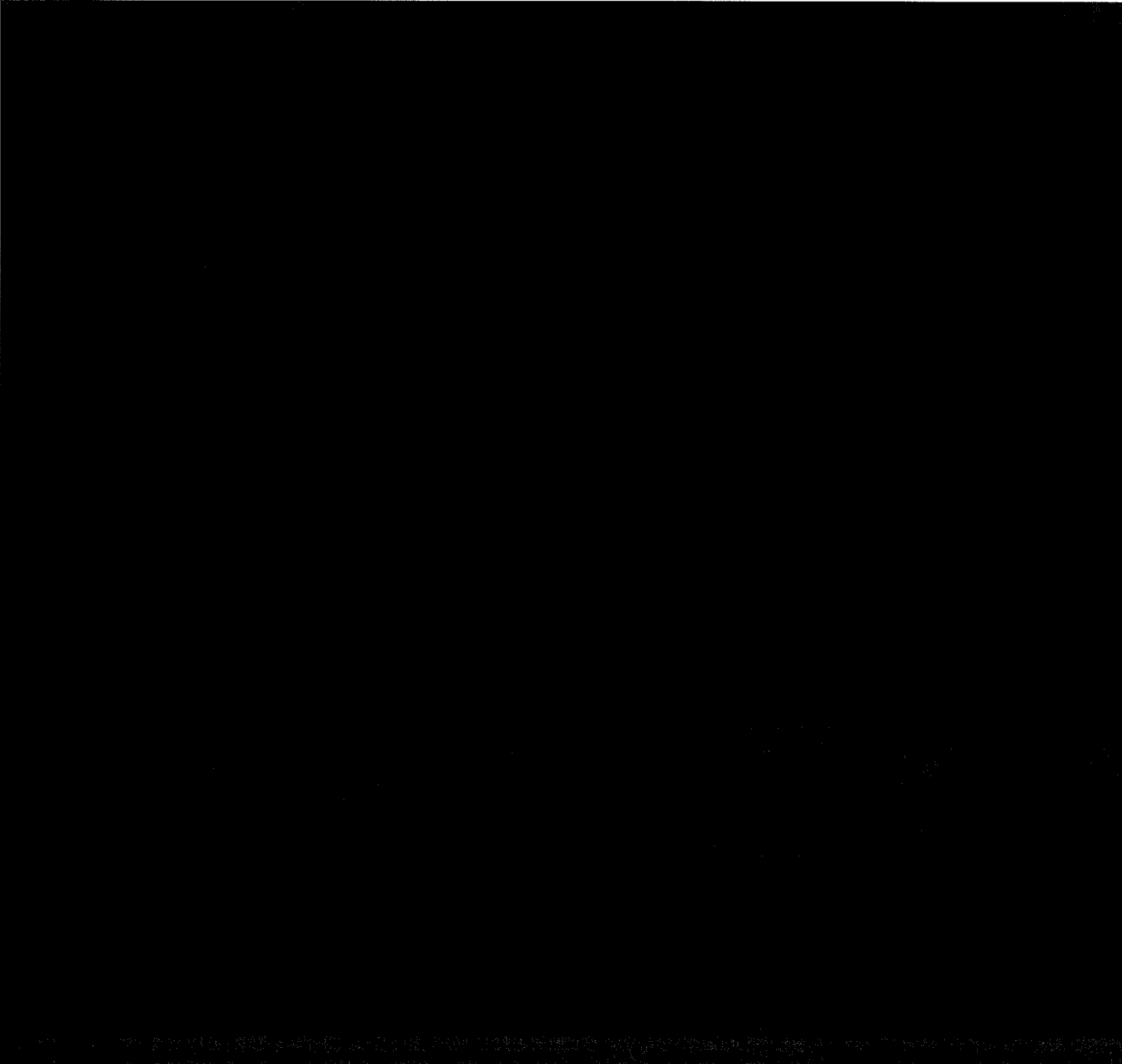
Invoice Date 11/07/2014

Invoice Number 404217

Page Number 5

10/20/14	CLIFF H. NELSON	P250	A106	.20	345.00	\$69.00
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Prepare correspondence to Company regarding pleadings issued by DC Circuit and
Cross Application for appeal by NLRB.



07580 HCR MANOR CARE

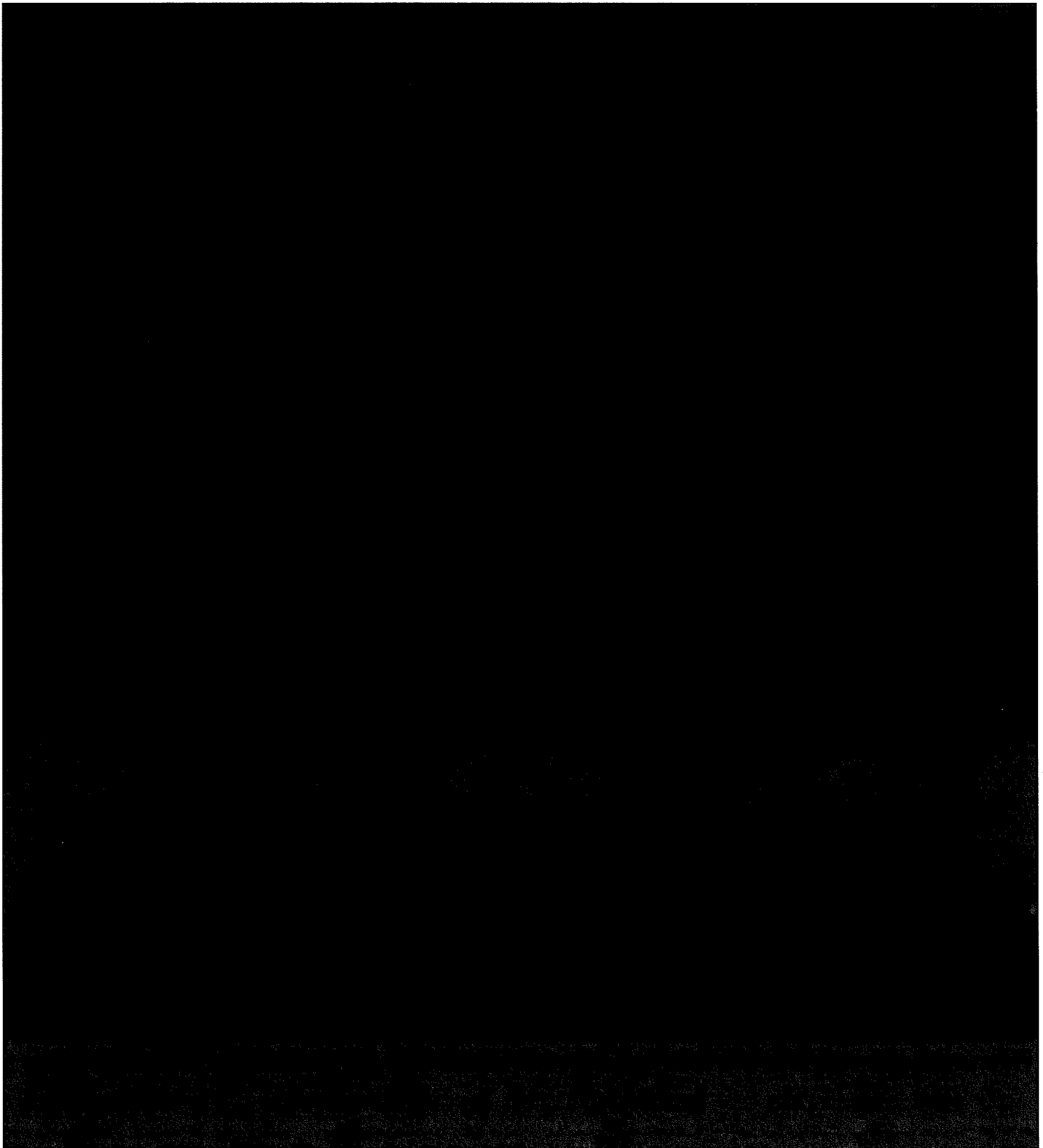
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 11/07/2014

Invoice Number 404217

Page Number 6



07580 HCR MANOR CARE

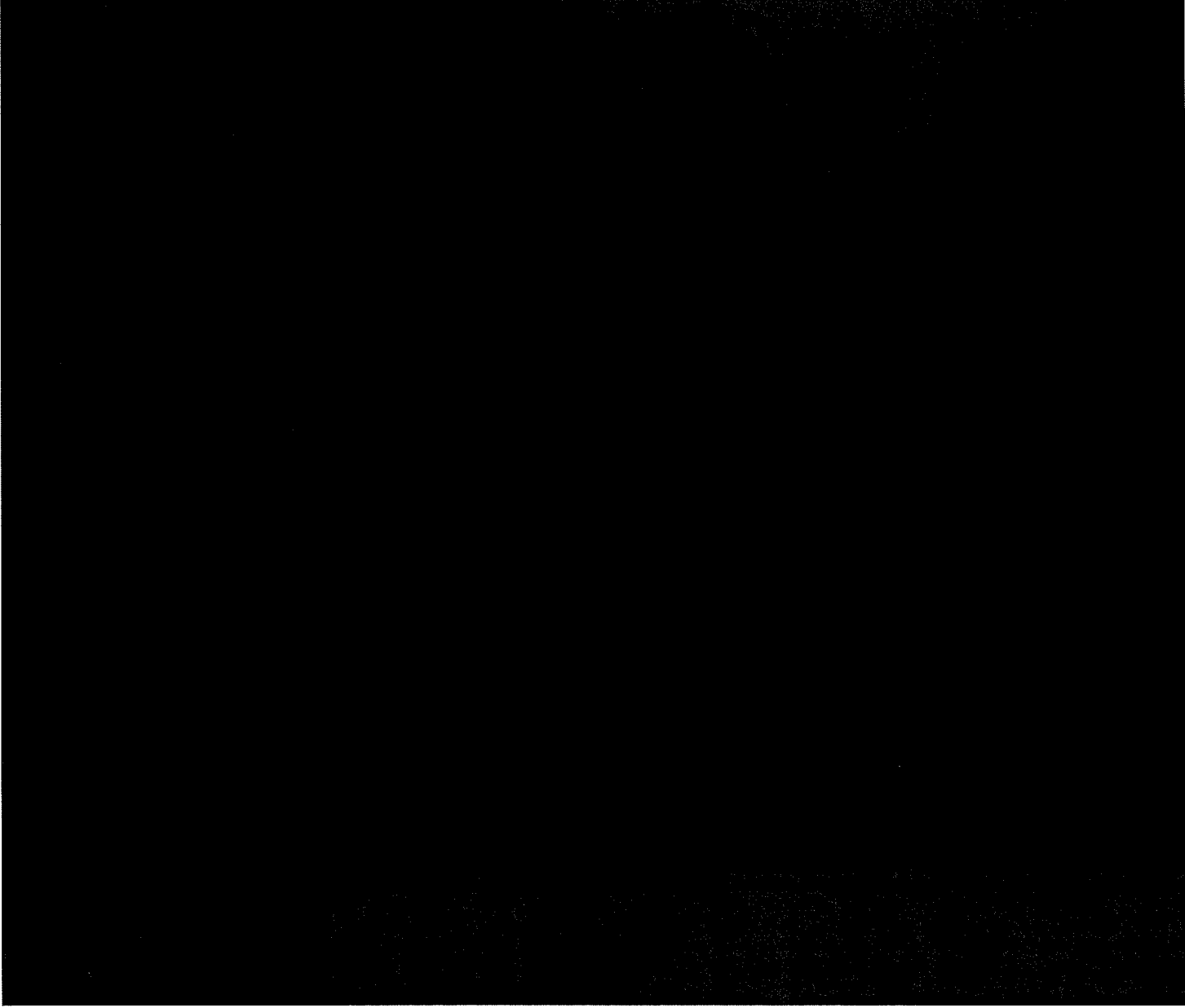
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378


Invoice Date 11/07/2014

Invoice Number 404217

Page Number 7



10/29/14	CHARLES P ROBERTS,III	P250	A104	.40	345.00	\$138.00
Legal review of appeal issues and likelihood of success.						



CONSTANGY, BROOKS & SMITH, LLP

BILLING DEPARTMENT

P. O. BOX 102476

ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955

Tax ID # 58-0616335

HCR MANOR CARE

ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.

P.O. BOX 10086

TOLEDO, OH 43699-0086

Invoice Number 406523**Invoice Date** 12/05/2014**Client Number** 07580**Matter Number** 61223

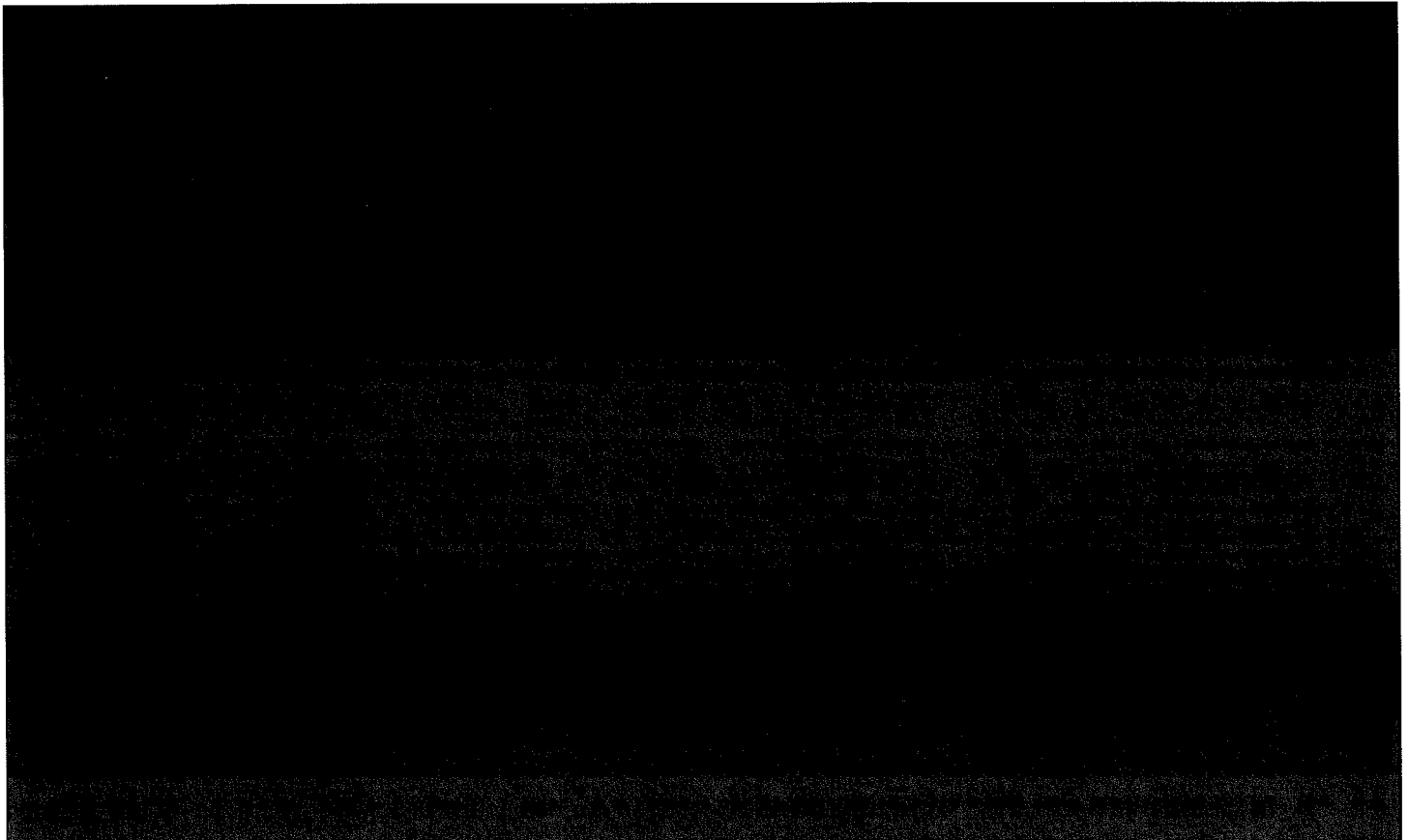
FOR PROFESSIONAL SERVICES RENDERED THROUGH NOVEMBER 30, 2014

REGARDING: MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
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07580 HCR MANOR CARE

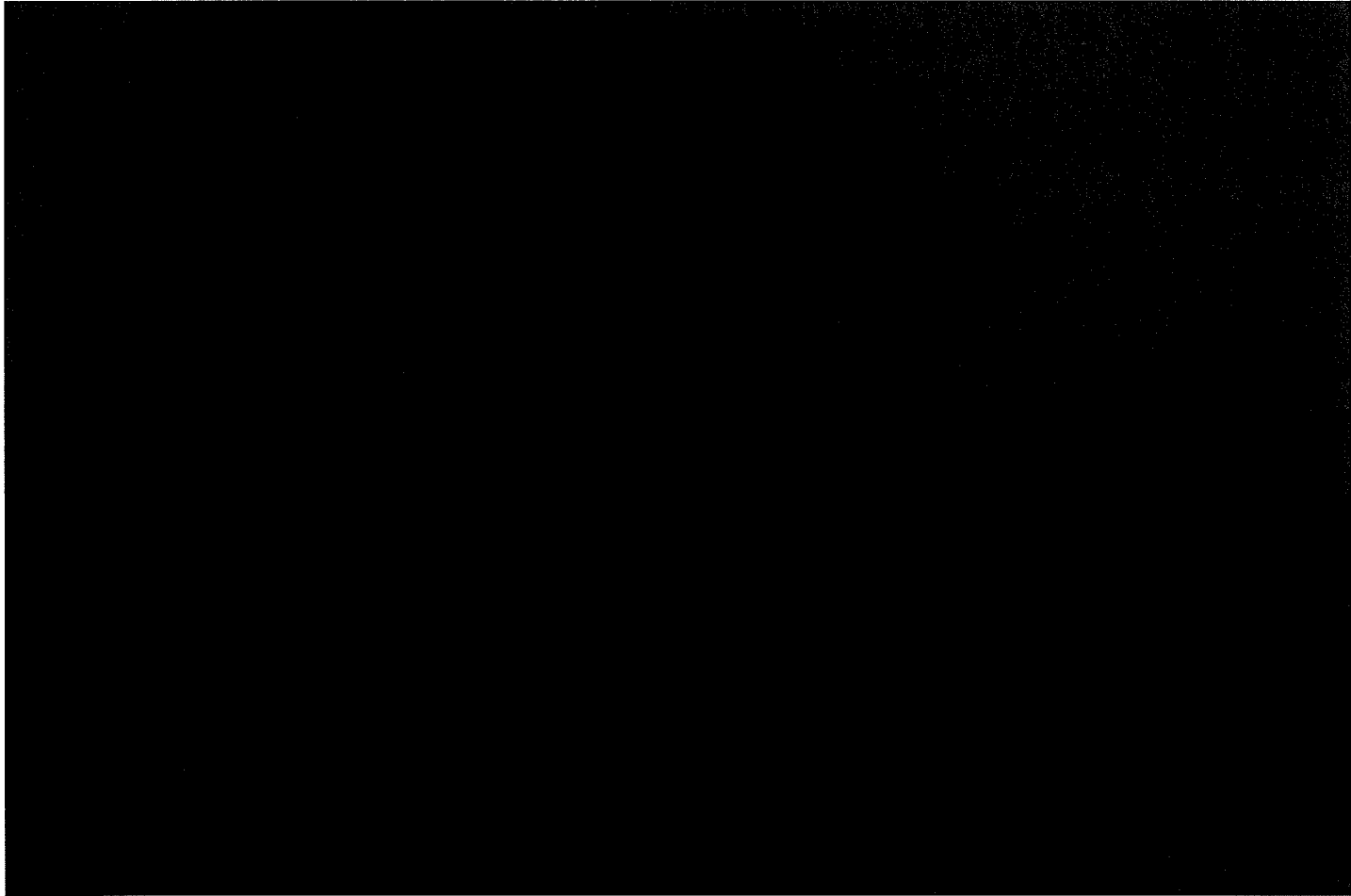
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

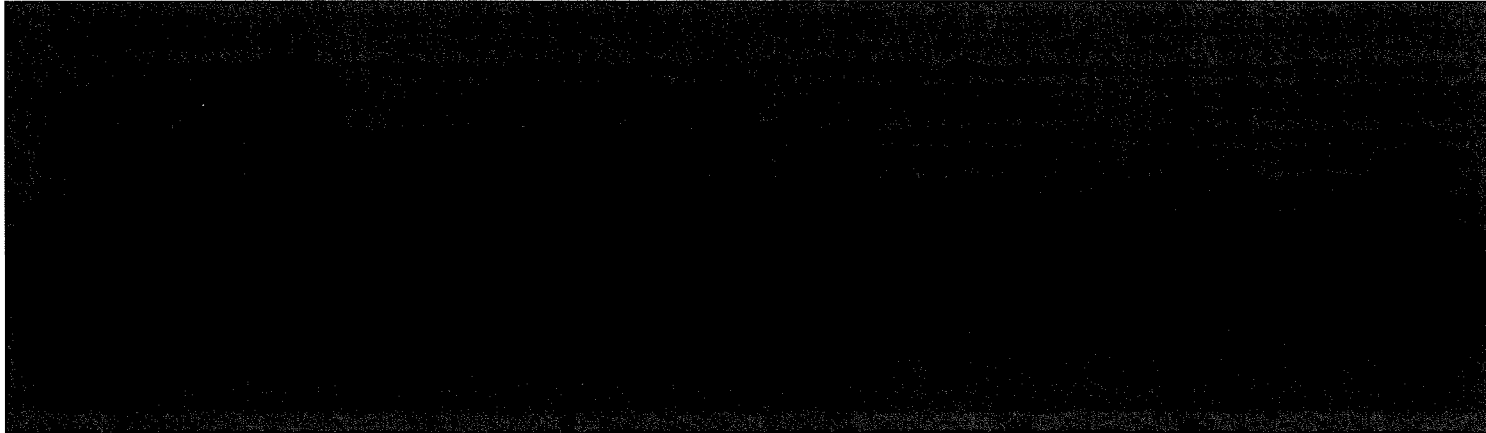
Invoice Date 12/05/2014

Invoice Number 406523

Page Number 3



11/13/14	CLIFF H. NELSON	P250	A104	.50	345.00	\$172.50
Work on appeal before DC Circuit.						



07580 HCR MANOR CARE

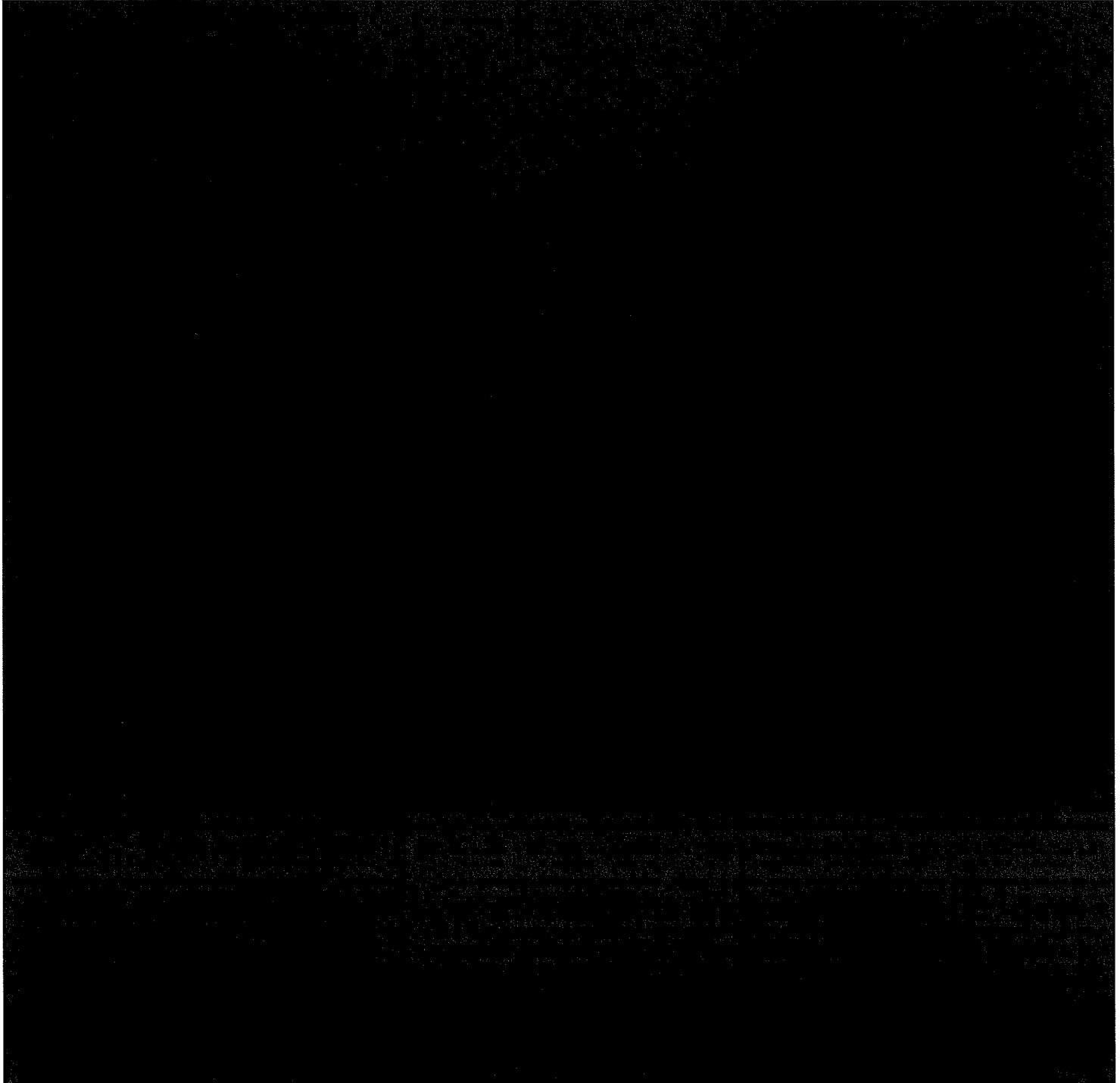
61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

REFERENCE NO.: M20661378

Invoice Date 12/05/2014

Invoice Number 406523

Page Number 4



11/25/14

CHARLES P ROBERTS,III

P250

A104

.80

345.00

\$276.00

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - R CASE PETITION - ELECTION APPEAL

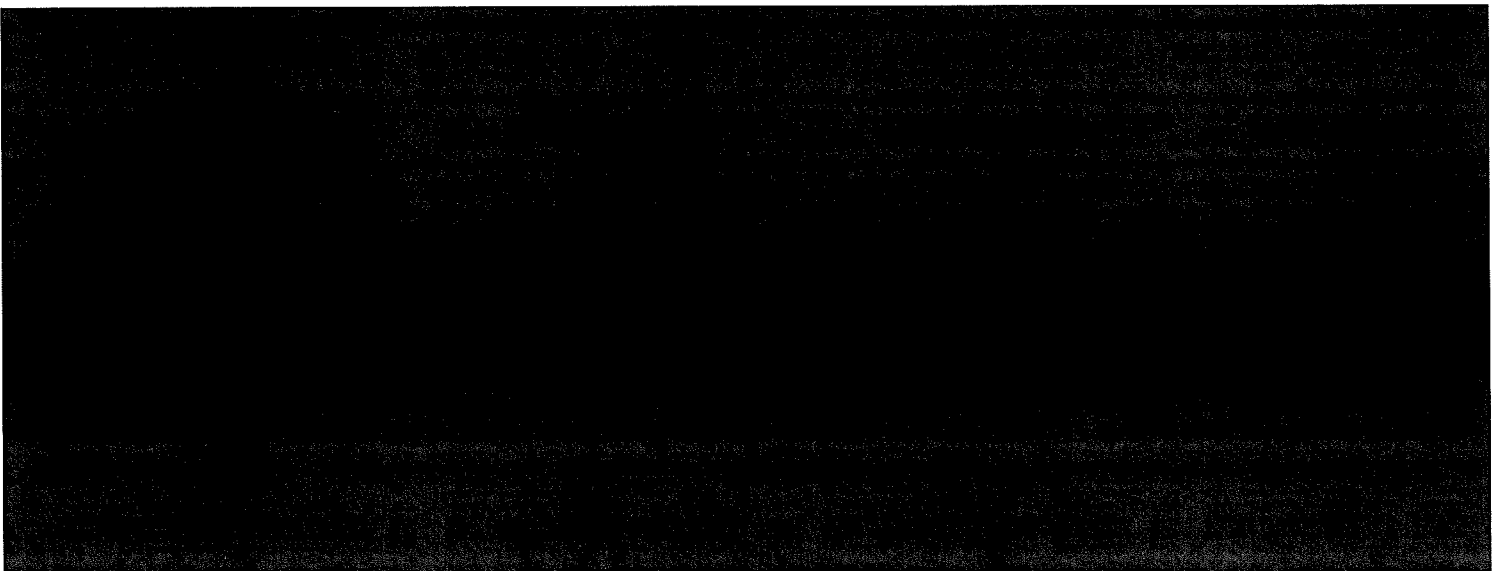
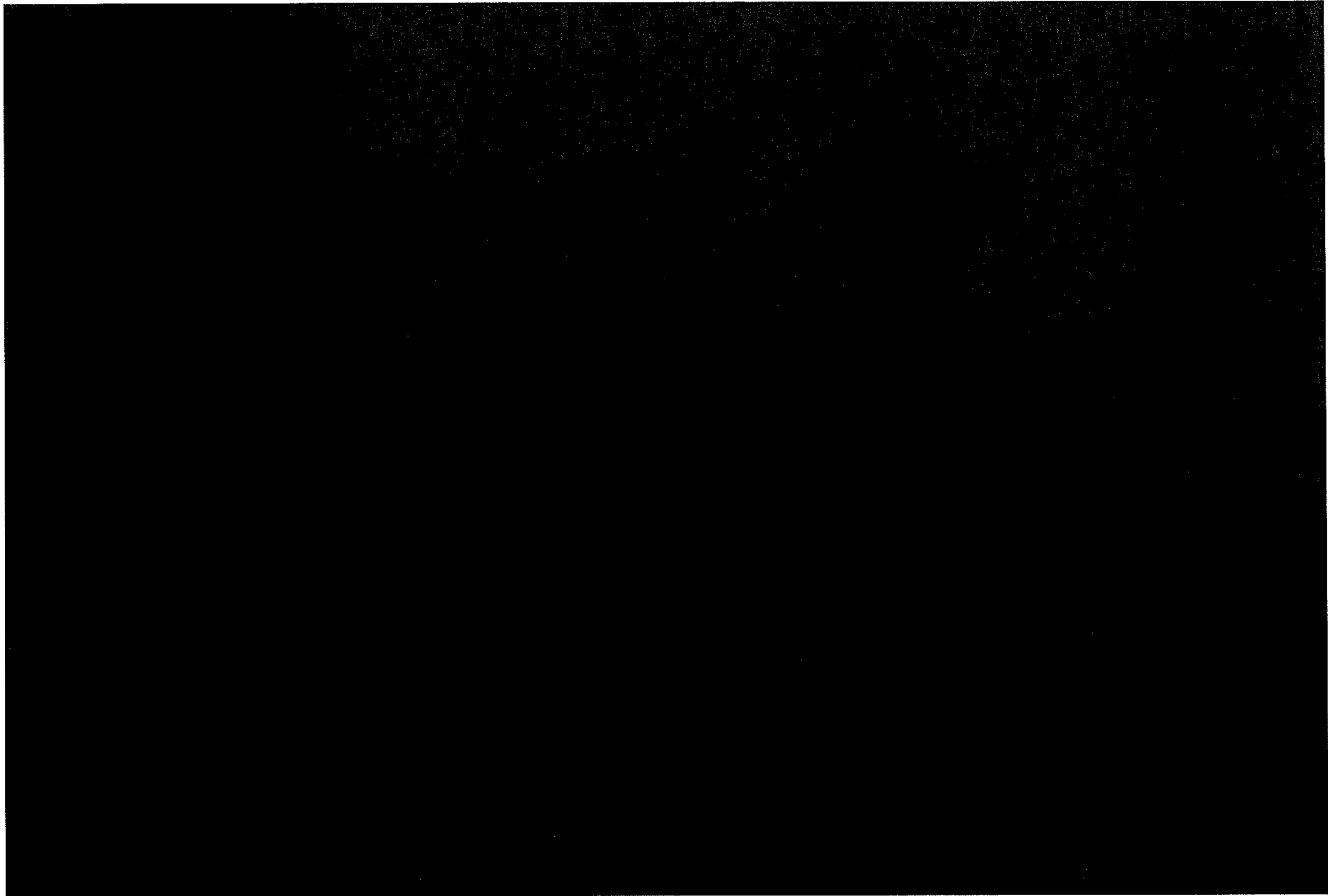
REFERENCE NO.: M20661378

Invoice Date 12/05/2014

Invoice Number 406523

Page Number 5

Review documents for preparation of joint appendix.



CONSTANGY, BROOKS & SMITH, LLP

BILLING DEPARTMENT

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ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955

Tax ID # 58-0616335

HCR MANOR CARE

ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.

P.O. BOX 10086

TOLEDO, OH 43699-0086

Invoice Number 407725**Invoice Date** 01/09/2015

Client Number 07580



Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2014

REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
						
12/15/14	CHARLES P ROBERTS,III	P250	A104	1.30	345.00	\$448.50
Reviewed and analyzed documents for joint appendix.						
						

ALABAMA

CALIFORNIA

FLORIDA

GEORGIA

ILLINOIS

MASSACHUSETTS

MISSOURI

NEW JERSEY

NORTH CAROLINA

SOUTH CAROLINA

TENNESSEE

TEXAS

VIRGINIA

WISCONSIN


07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378


Invoice Date 01/09/2015

Invoice Number 407725

Page Number 3



12/19/14	CHARLES P ROBERTS,III	P250	A104	1.30	345.00	\$448.50
Review exhibits from hearing; prepared joint appendix.						


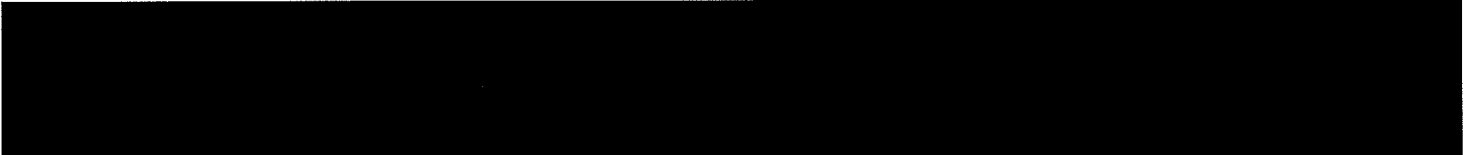


12/22/14	CHARLES P ROBERTS,III	P250	A104	.50	345.00	\$172.50
Reviewed and identified documents for inclusion in joint appendix.						

12/29/14	CHARLES P ROBERTS,III	P250	A103	.40	345.00	\$138.00
Prepared joint appendix.						

12/29/14	CLIFF H. NELSON	P250	A103	.30	345.00	\$103.50
Work on Brief to DC Circuit.						

12/31/14	CHARLES P ROBERTS,III	P250	A103	2.40	345.00	\$828.00
Prepared joint appendix and drafted opening brief to court.						



CONSTANGY, BROOKS & SMITH, LLP

BILLING DEPARTMENT

P. O. BOX 102476

ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955

Tax ID # 58-0616335

HCR MANOR CARE

ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.

P.O. BOX 10086

TOLEDO, OH 43699-0086

Invoice Number 409730**Invoice Date 02/09/2014**

Client Number 07580

Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2015REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
01/02/15	CLIFF H. NELSON	P250	A104	.50	350.00	\$175.00
	Review appendix for submission.					
01/05/15	CHARLES P ROBERTS,III	P250	A103	4.20	350.00	\$1,470.00
	Drafted opening brief to court.					

07580 HCR MANOR CARE

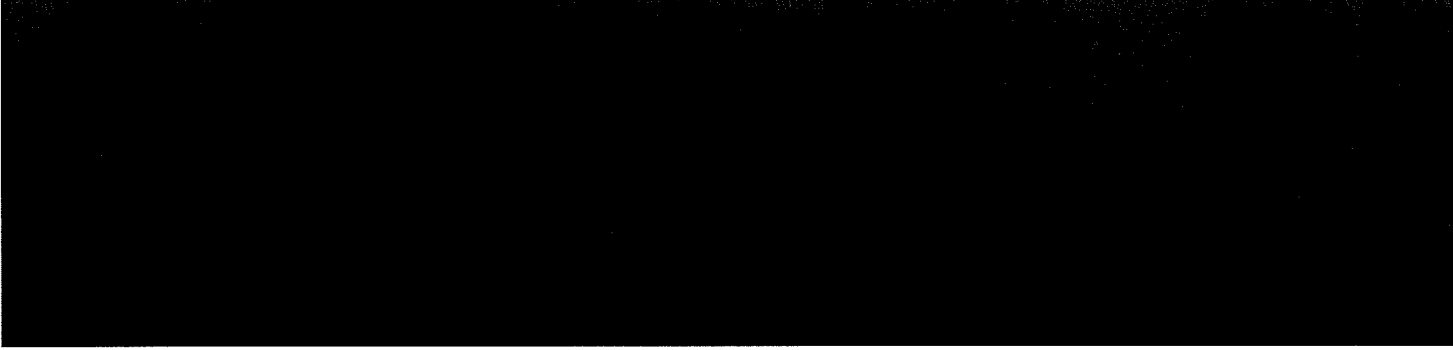
61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

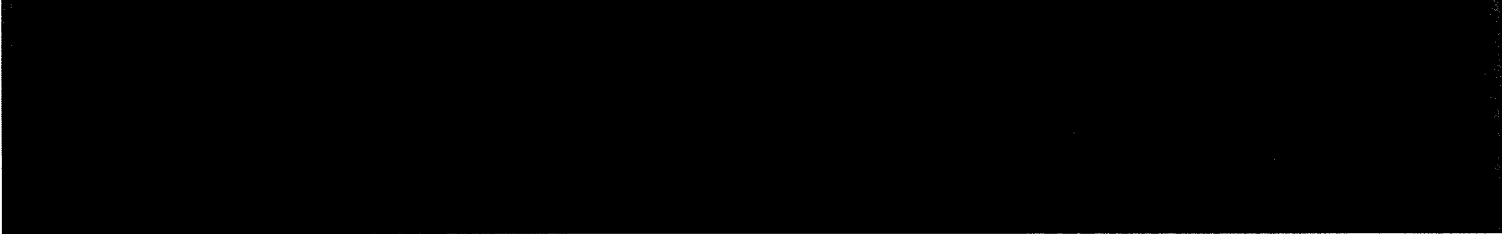
Invoice Date 02/09/2014

Invoice Number 409730

Page Number 3




01/06/15	CHARLES P ROBERTS,III	P250	A103	7.00	350.00	\$2,450.00
Drafted opening brief to court of appeals.						



01/07/15	CHARLES P ROBERTS,III	P250	A103	6.60	350.00	\$2,310.00
Revised and finalized opening brief to court.						

01/07/15	CLIFF H. NELSON	P250	A103	1.50	350.00	\$525.00
Review and revise draft of brief to the D.C. Circuit.						

01/08/15	CHARLES P ROBERTS,III	P250	A103	.60	350.00	\$210.00
Finalized opening brief to court of appeals						



07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 02/09/2014

Invoice Number 409730

Page Number 4

01/13/15	CLIFF H. NELSON	P250	A108	.10	350.00	\$35.00
Follow-up regarding brief to Circuit.						
01/14/15	CHARLES P ROBERTS,III	P250	A104	.50	350.00	\$175.00
Reviewed and corrected fact statements.						
01/14/15	CLIFF H. NELSON	P250	A108	.00	0.00	\$0.00
Follow-up regarding transcript mischaracterizations in brief to DC Circuit. (NO CHARGE .8)						
01/20/15	CHARLES P ROBERTS,III	P250	A103	.30	350.00	\$105.00
Drafted letter to court re corrected brief.						
01/21/15	CLIFF H. NELSON	P250	A104	.10	350.00	\$35.00
Review errata correspondence sent to Clerk's office.						
01/21/15	CLIFF H. NELSON	P250	A106	.10	350.00	\$35.00
Prepare correspondence to client regarding errata correspondence sent to Clerk's office.						

**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

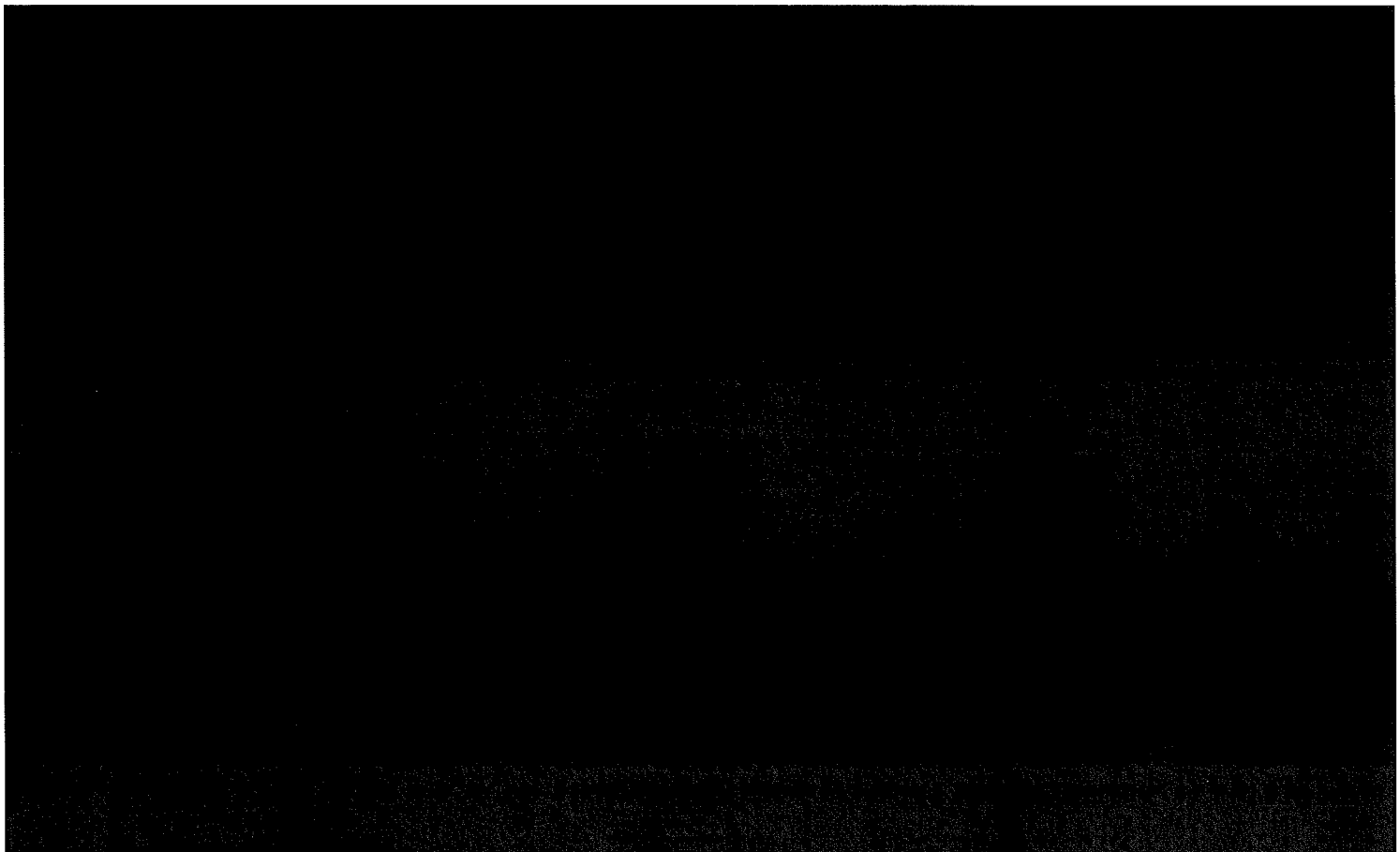
BILLING DEPARTMENT

P.O. BOX 102476 • ATLANTA, GEORGIA 30368-0476
TELEPHONE (404) 230-8622 • FACSIMILE (404) 525-6955
TAX ID # 58-0616335HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086**Invoice Number** 411871
Invoice Date 03/13/2015
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH FEBRUARY 28, 2015REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
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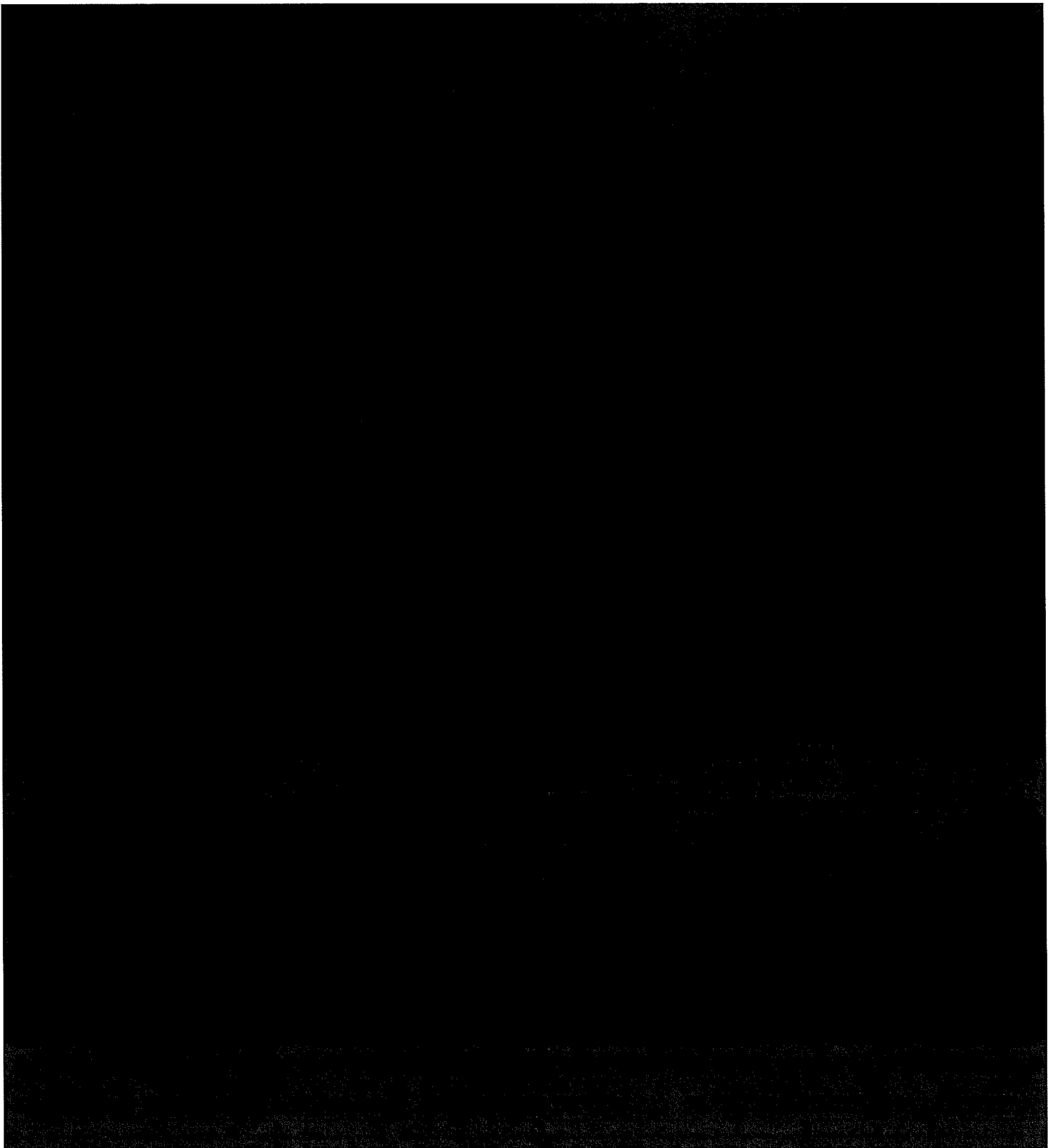
07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

Invoice Date 03/13/2015

Invoice Number 411871

Page Number 3



07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 03/13/2015

Invoice Number 411871

Page Number 4



02/10/15	CLIFF H. NELSON	P250	A104	.30	350.00	\$105.00
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Review recent DC case on election objections.



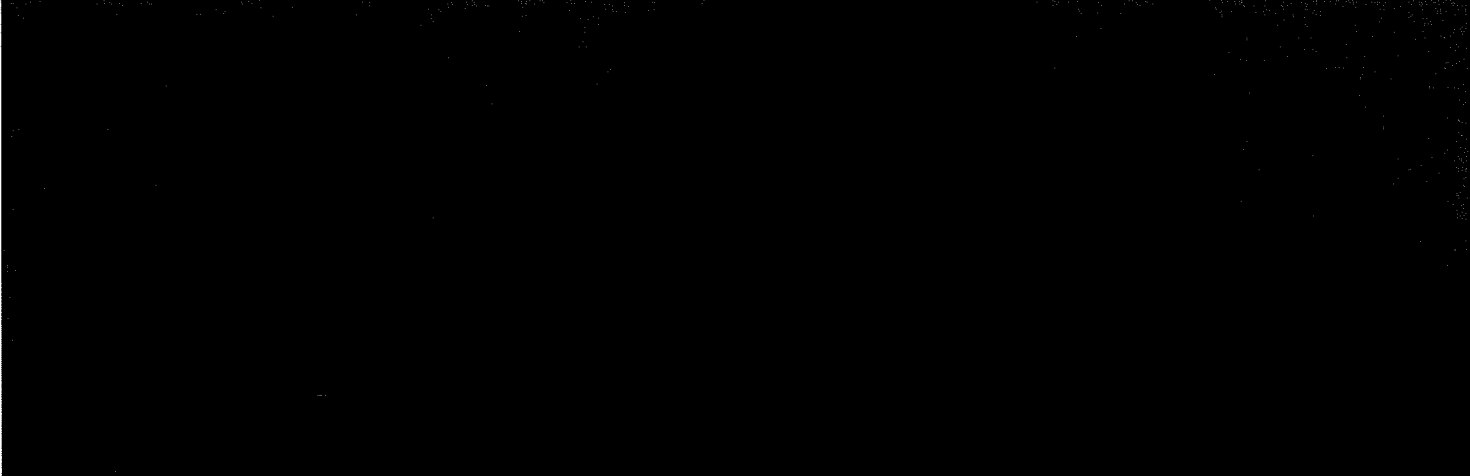
07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

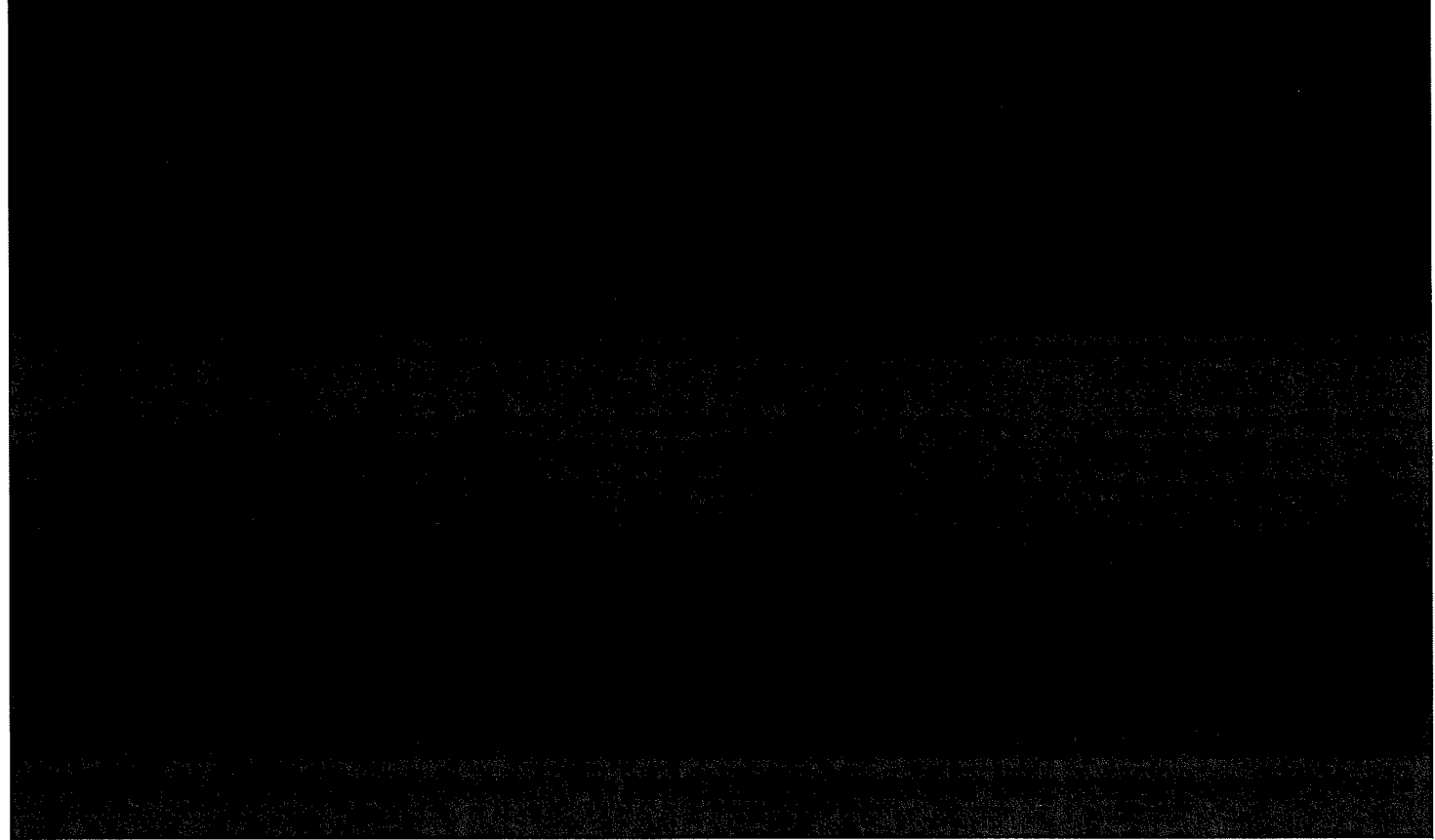
Invoice Date 03/13/2015

Invoice Number 411871

Page Number 5



02/11/15	CLIFF H. NELSON	P250	A104	.60	350.00	\$210.00
Review brief filed by government in appeal of R case before D.C. Circuit.						
02/11/15	CLIFF H. NELSON	P250	A103	.80	350.00	\$280.00
Prepare memo regarding points to be included in reply brief.						



07580 HCR MANOR CARE


61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 03/13/2015

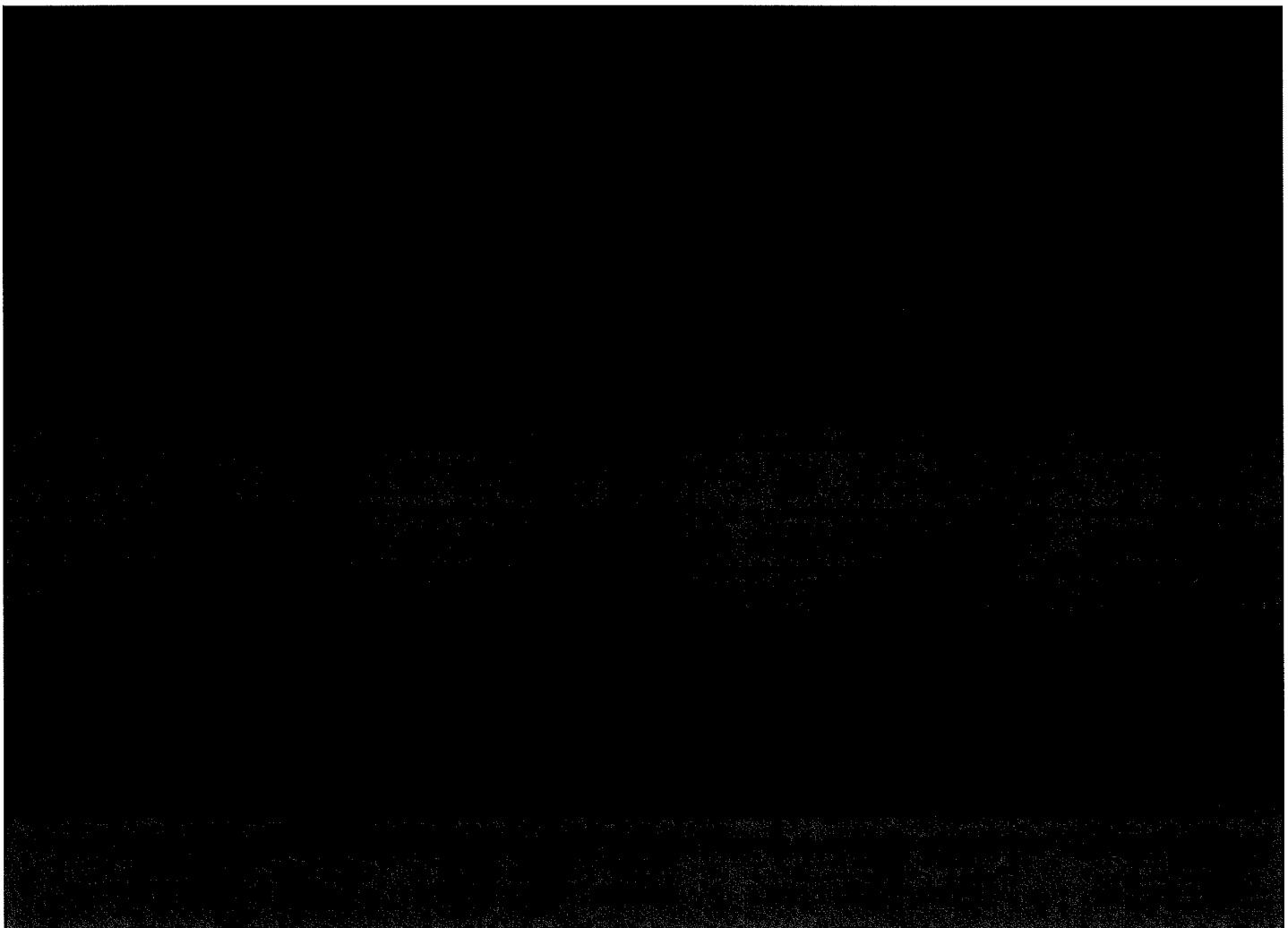
Invoice Number 411871

Page Number 6



02/13/15	CHARLES P ROBERTS,III	P250	A104	.80	350.00	\$280.00
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Legal review of cases relied upon by NLRB in its brief.



07580 HCR MANOR CARE

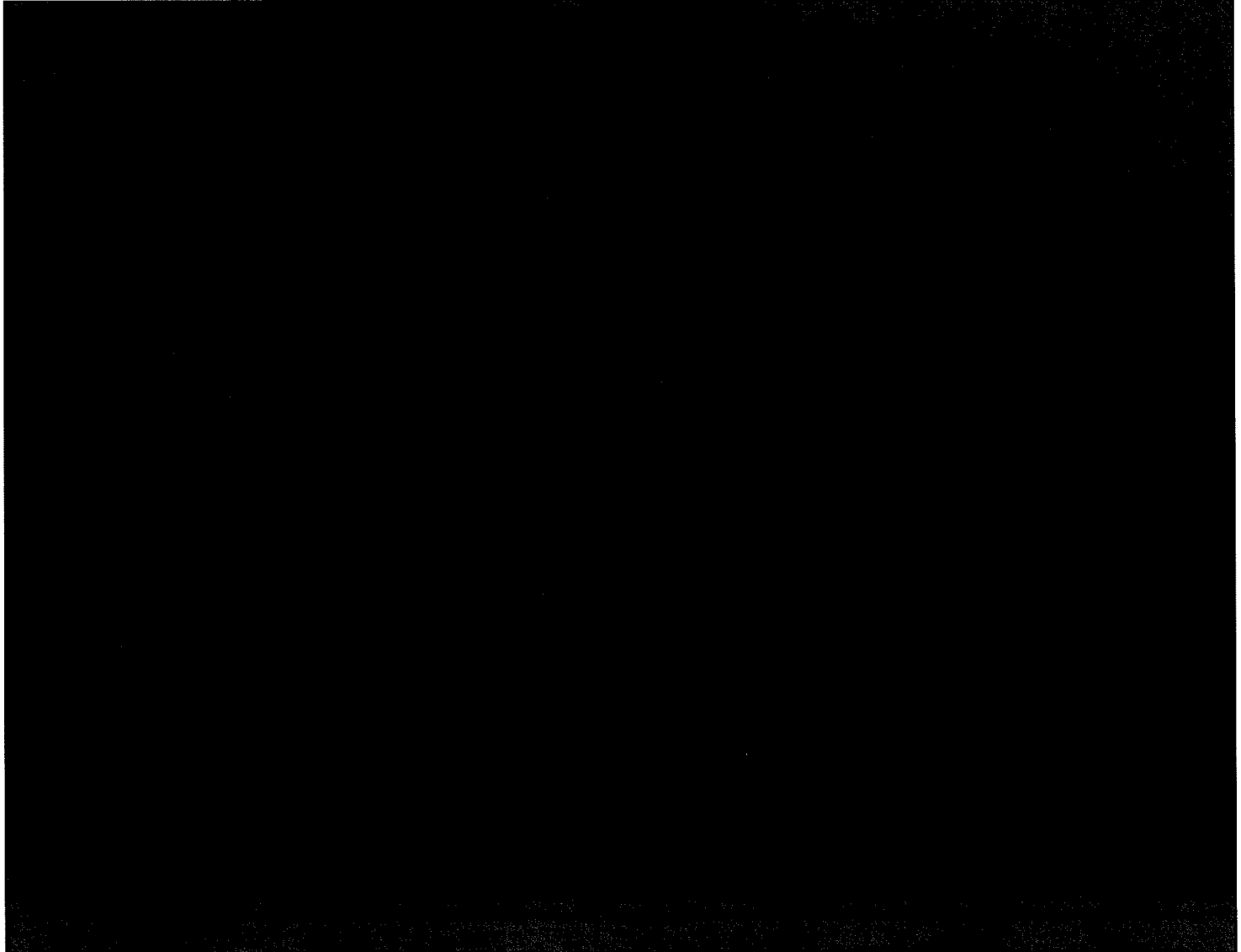
61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 03/13/2015

Invoice Number 411871

Page Number 7



02/16/15	CHARLES P ROBERTS,III	P250	A103	4.50	350.00	\$1,575.00
	Drafted reply brief to NLRB brief.					

02/17/15	CHARLES P ROBERTS,III	P250	A103	1.70	350.00	\$595.00
	Drafted reply brief to NLRB brief.					

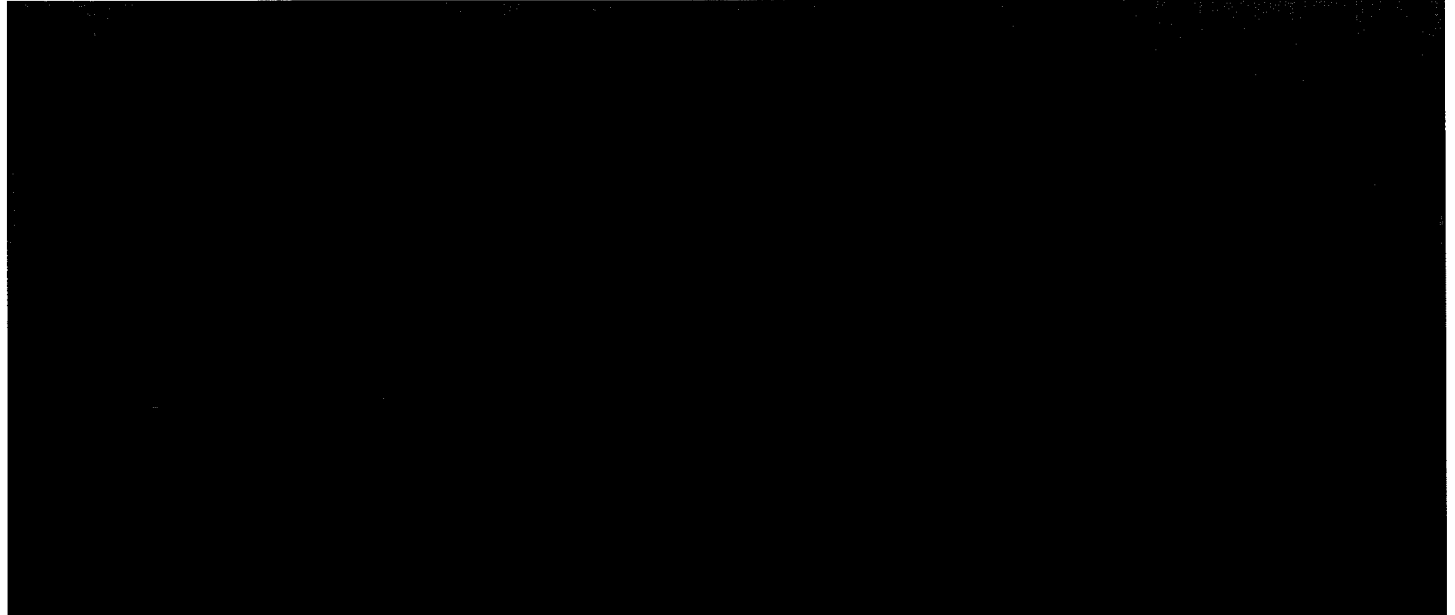
07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

Invoice Date 03/13/2015

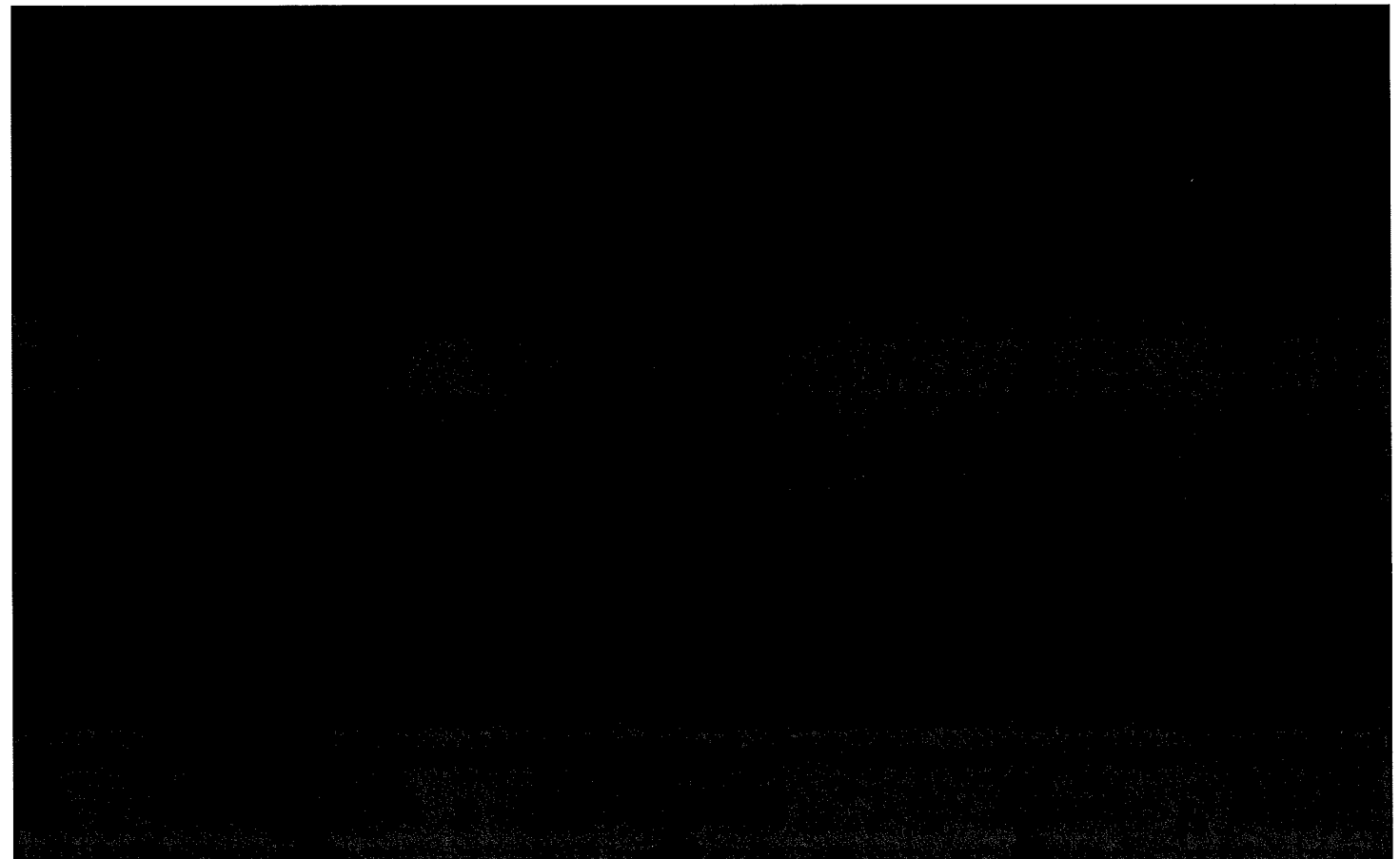
Invoice Number 411871

Page Number 8



02/18/15	CHARLES P ROBERTS,III	P250	A103	4.80	350.00	\$1,680.00
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Drafted reply brief to court.



07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 03/13/2015

Invoice Number 411871

Page Number 9

02/19/15	CHARLES P ROBERTS,III	P250	A103	.40	350.00	\$140.00
	Drafted reply brief to court.					

02/19/15	CHARLES P ROBERTS,III	P250	A103	6.40	350.00	\$2,240.00
	Drafted reply brief to court.					

02/20/15	CHARLES P ROBERTS,III	P250	A103	3.30	350.00	\$1,155.00
	Finalized reply brief.					

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 03/13/2015

Invoice Number 411871

Page Number 10

02/23/15	CHARLES P ROBERTS,III	P250	A103	.40	350.00	\$140.00
	Made final revisions to reply brief.					
02/23/15	CLIFF H. NELSON	P250	A106	.10	350.00	\$35.00
	Prepare correspondence to client regarding election appeal.					

**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

BILLING DEPARTMENT

P.O. BOX 102476 • ATLANTA, GEORGIA 30368-0476
TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955
TAX ID # 58-0616335HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086**Invoice Number** 424618
Invoice Date 09/08/2015
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH AUGUST 31, 2015

REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378**BILLING DETAIL**

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
08/04/15	CHARLES P ROBERTS, III	L530	A104	.30	350.00	\$105.00
	Reviewed oral argument notice and court statement of procedures					
08/04/15	CLIFF H. NELSON	P250	A104	.10	350.00	\$35.00
	Review correspondence from Court regarding oral argument.					
08/04/15	CLIFF H. NELSON	P250	A106	.20	350.00	\$70.00
	Prepare correspondence to client regarding oral argument.					


**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

BILLING DEPARTMENT

P.O. BOX 102476 • ATLANTA, GEORGIA 30368-0476

TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955

TAX ID # 58-0616335

HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086

Invoice Number 427685
Invoice Date 10/06/2015
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2015

REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
09/01/15	CLIFF H. NELSON	P250	A102	.50	350.00	\$175.00
Excluded	Check regarding new case law and pending issues before DC Circuit.					
09/21/15	CHARLES P ROBERTS,III	P250	A104	1.50	350.00	\$525.00
Excluded	Legal review and analysis of recent DC Circuit decisions on issue of authority of Regional Directors.					
09/21/15	CHARLES P ROBERTS,III	P250	A104	1.50	350.00	\$525.00
	Reviewed Board arguments.					
09/21/15	CHARLES P ROBERTS,III	P250	A104	.50	350.00	\$175.00
Excluded	Evaluate propriety of filing letter of supplemental authority.					
09/23/15	CHARLES P ROBERTS,III	P250	A104	1.50	350.00	\$525.00
Excluded	Continued analysis of impact of recent DC Circuit decisions on case.					
09/28/15	CLIFF H. NELSON	P250	A104	.60	350.00	\$210.00
	Begin work on preparations for oral argument before DC Circuit on representation case.					

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL

REFERENCE NO.: M20661378

Invoice Date 10/06/2015

Invoice Number 427685

Page Number 3

09/28/15	CLIFF H. NELSON	P250	A107	.20	350.00	\$70.00
Phone call with union lawyer regarding oral argument.						
09/29/15	CHARLES P ROBERTS,III	P250	A103	3.00	350.00	\$1,050.00
Excluded	Drafted letter to court re supplemental citations of recent decisions supporting Company's legal position.					
09/29/15	CLIFF H. NELSON	P250	A104	.20	350.00	\$70.00
Work on preparation for oral argument.						
09/29/15	CLIFF H. NELSON	P250	A104	.40	350.00	\$140.00
Excluded	Review and approve supplemental advisory on recent cases to the DC Circuit.					
09/30/15	CHARLES P ROBERTS,III	P250	A103	2.20	350.00	\$770.00
Excluded	Editing and finalizing of letter to court re supplemental authorities.					
09/30/15	CLIFF H. NELSON	P250	A104	.30	350.00	\$105.00
Work on issues related to oral argument.						


**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

BILLING DEPARTMENT

 P.O. BOX 102476 • ATLANTA, GEORGIA 30368-0476
 TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955
 TAX ID # 58-0616335

 HCR MANOR CARE
 ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
 P.O. BOX 10086
 TOLEDO, OH 43699-0086

Invoice Number 430529
Invoice Date 11/10/2015
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH OCTOBER 31, 2015

 REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
 REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
10/06/15	CHARLES P ROBERTS,III	P250	A104	1.00	350.00	\$350.00
	Begin preparation for oral argument and review briefs filed by all parties.					
10/07/15	CHARLES P ROBERTS,III	P250	A104	1.30	350.00	\$455.00
	Continued preparation for oral argument and review record on appeal.					
10/12/15	CHARLES P ROBERTS,III	P250	A104	.40	350.00	\$140.00
	Continued preparation for oral argument and reviewed panel assignment and oral argument guidelines.					
10/14/15	CHARLES P ROBERTS,III	P250	A103	.50	350.00	\$175.00
	Prepared and filed oral argument form.					
10/14/15	CHARLES P ROBERTS,III	P250	A104	1.50	350.00	\$525.00
	Continued preparation for oral argument and continued review and study of pertinent cases.					
10/16/15	CHARLES P ROBERTS,III	P250	A104	1.60	350.00	\$560.00
	Continued preparation for oral argument by reviewing record on appeal and briefs.					
10/16/15	CHARLES P ROBERTS,III	L530	A103	1.00	350.00	\$350.00

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

Invoice Date 11/10/2015

Invoice Number 430529

Page Number 3

Prepared chronology of critical events.

10/19/15	CHARLES P ROBERTS,III	P250	A104	1.80	350.00	\$630.00
Continued review of record on appeal and briefs in preparation for oral argument.						
10/19/15	CLIFF H. NELSON	P250	A104	.50	350.00	\$175.00
Prepare for oral argument.						
10/20/15	CHARLES P ROBERTS,III	P250	A104	1.60	350.00	\$560.00
Continued review of record and briefs in preparation for oral argument.						
10/21/15	CHARLES P ROBERTS,III	P250	A103	2.00	350.00	\$700.00
Drafted oral argument outline.						
10/21/15	CHARLES P ROBERTS,III	P250	A104	3.00	350.00	\$1,050.00
Reviewed briefs and arguments.						
						
10/21/15	CLIFF H. NELSON	P250	A104	1.20	350.00	\$420.00
Prepare for oral argument - review transcript of hearing on objections.						
10/22/15	CHARLES P ROBERTS,III	P250	A104	2.00	350.00	\$700.00
Prepare for oral argument.						
10/22/15	CHARLES P ROBERTS,III	P250	A103	2.00	350.00	\$700.00
Prepare anticipated questions and responses.						
10/22/15	CHARLES P ROBERTS,III	P250	A103	2.00	350.00	\$700.00
Outline argument.						
10/22/15	CHARLES P ROBERTS,III	P250	A104	2.00	350.00	\$700.00
Reviewed record and pertinent cases.						
10/22/15	CLIFF H. NELSON	P250	A104	2.50	350.00	\$875.00
Review record in case below as preparation for oral argument.						

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

Invoice Date 11/10/2015

Invoice Number 430529

Page Number 4

10/22/15	CLIFF H. NELSON	P250	A111	.00	0.00	\$0.00
Travel to Washington, DC. (4.0 hrs. at N/C).						
10/23/15	CHARLES P ROBERTS,III	P250	A104	6.00	350.00	\$2,100.00
Continued preparation for oral argument.						
10/23/15	CHARLES P ROBERTS,III	P250	A109	.50	350.00	\$175.00
Present oral argument to court of appeals.						
10/23/15	CLIFF H. NELSON	P250	A109	6.50	350.00	\$2,275.00
Prepare for and represent client at oral argument before DC Circuit Court.						
10/23/15	CLIFF H. NELSON	P250	A111	.00	0.00	\$0.00
Travel time. (4.0 hrs. at N/C).						



HCR MANOR CARE
 ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
 P.O. BOX 10086
 TOLEDO, OH 43699-0086

Invoice Number 442727
Invoice Date 05/09/2016
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH APRIL 30, 2016

REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
 REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
04/21/16	CLIFF H. NELSON	P250	A104	.60	360.00	\$216.00
Excluded	Review Advanced Disposal case in 3rd Circuit for our appeal before the D.C. Circuit.					
04/27/16	CLIFF H. NELSON	P250	A106	.20	360.00	\$72.00
Excluded	Prepare correspondence to client regarding recent decision issued by 3rd Circuit in Advanced Disposal case.					

CURRENT FEES

\$324.00

Summary:

Task Code	Description	Hrs	Value
P250	Employee/Labor	.9	324.00
Totals		.9	324.00


**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

BILLING DEPARTMENT

P.O. Box 102476 • ATLANTA, GEORGIA 30368-0476
TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955
TAX ID # 58-0616335

HCR MANOR CARE
ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086

Invoice Number 445227
Invoice Date 06/08/2016
Client Number 07580
Matter Number 61223

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2016

REGARDING: MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

BILLING DETAIL

DATE	ATTORNEY	TASK	ACTIVITY	HOURS	RATE	VALUE
05/04/16	CHARLES P ROBERTS,III	P250	A104	.40	360.00	\$144.00
Excluded	Reviewed NLRB's submission to court regarding recent Third Circuit decision regarding NLRB ratification of election.					
05/04/16	CHARLES P ROBERTS,III	P250	A103	2.00	360.00	\$720.00
Excluded	Drafted response to court distinguishing decision.					
05/04/16	CHARLES P ROBERTS,III	P250	A104	.60	360.00	\$216.00
Excluded	Reviewed Third Circuit decision.					
05/04/16	CLIFF H. NELSON	P250	A104	.10	360.00	\$36.00
Excluded	Review motion by NLRB to add reference to new case decision.					
05/05/16	CHARLES P ROBERTS,III	P250	A103	1.00	360.00	\$360.00

07580 HCR MANOR CARE

61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIAL
REFERENCE NO.: M20661378

Invoice Date 06/08/2016

Invoice Number 445227

Page Number 3

Excluded

 Revised and filed response to NLRB letter citing Third Circuit decision.

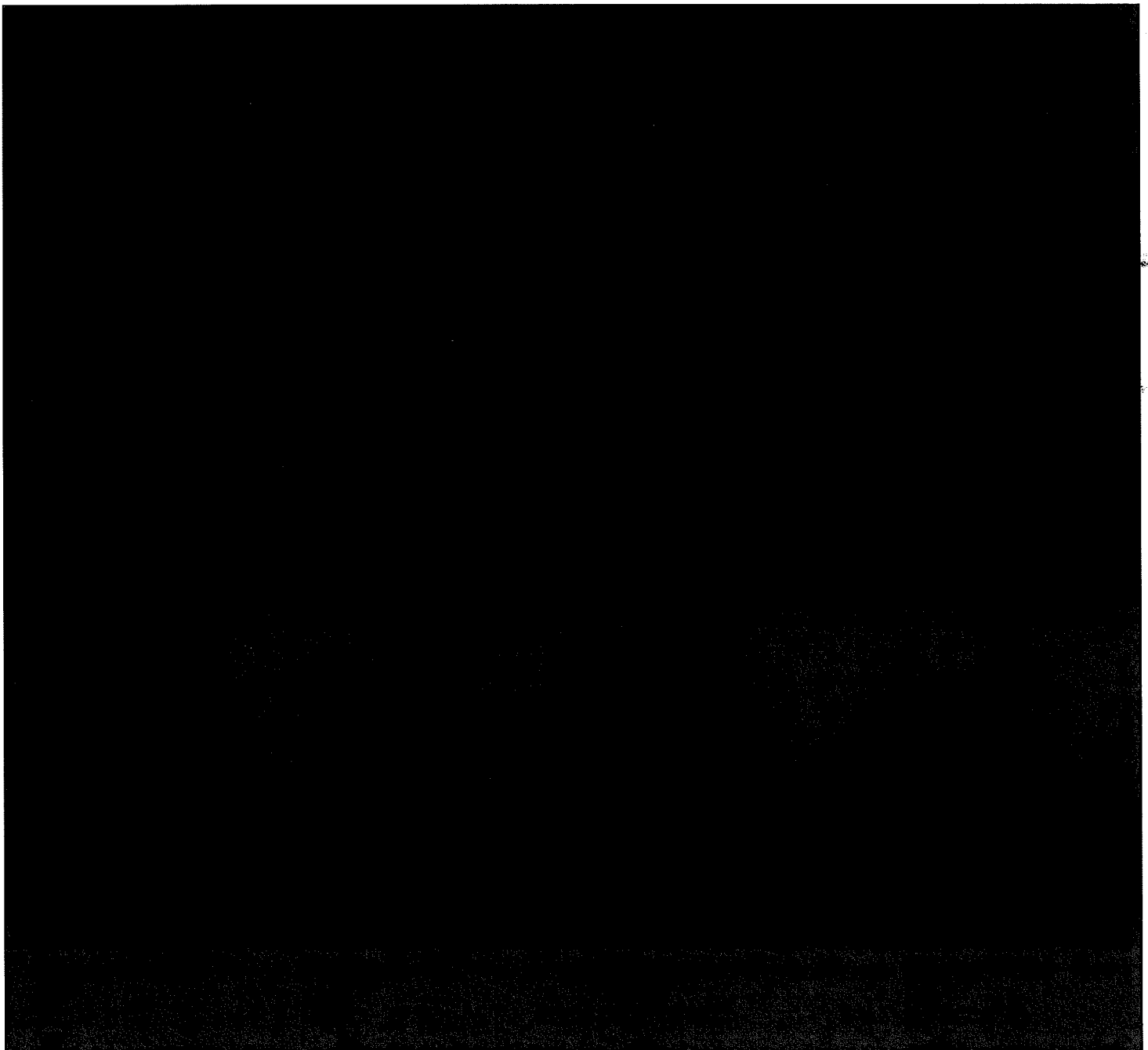
05/05/16	CLIFF H. NELSON	P250	A103	.30	360.00	\$108.00
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Excluded

 Review/revise response to NLRB to add case reference to their argument.

05/20/16	CHARLES P ROBERTS,III	P250	A104	1.00	360.00	\$360.00
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Reviewed court decision, assessed likely election dates and reviewed bill of costs issues.



CONSTANGY, BOOKS AND SMITH
PROFORMA REPORTPage 72 of 81
PROFORMA # 705929
FROM 01/01/01
THRU 05/31/16

ORIGINATING ATTORNEY: 0553 CLIFF H. NELSON
PRINCIPAL ATTORNEY : 0553 CLIFF H. NELSON
RESPONSIBLE ATTORNEY: 0553 CLIFF NELSON
ASSIGNED ATTORNEY : 0554 LEIGH E. TYSON

OTHER ORIG ATTORNEY :
OTHER PRIN ATTORNEY :

BILLING ADDRESS: HCR MANOR CARE

CLIENT-#: 07580 HCR MANOR CARE
MATTER-#: 61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP
REFERENCE NO.: M20661378

ATTN: MS. BETH KACZOR, V.P., DIRECTOR OF H.R.
P.O. BOX 10086
TOLEDO, OH 43699-0086

COPY 1:

COPY 2:

LOCATION: 04 ATLANTA

RATE CODE: 2
WHITEHILL FORMAT: YY821Y
BILLING FORMAT : 32
TIMECARD FORMAT : t4
COSTCARD FORMAT : 1

A/R BALANCE.....: \$4,351.07
TRUST RETAINER BALANCE....:
TRUST TOTAL BALANCE... : \$0.00

BILLING INSTRUCTIONS:

DATE OPENED : Jul 22, 2013
DATE CLOSED :

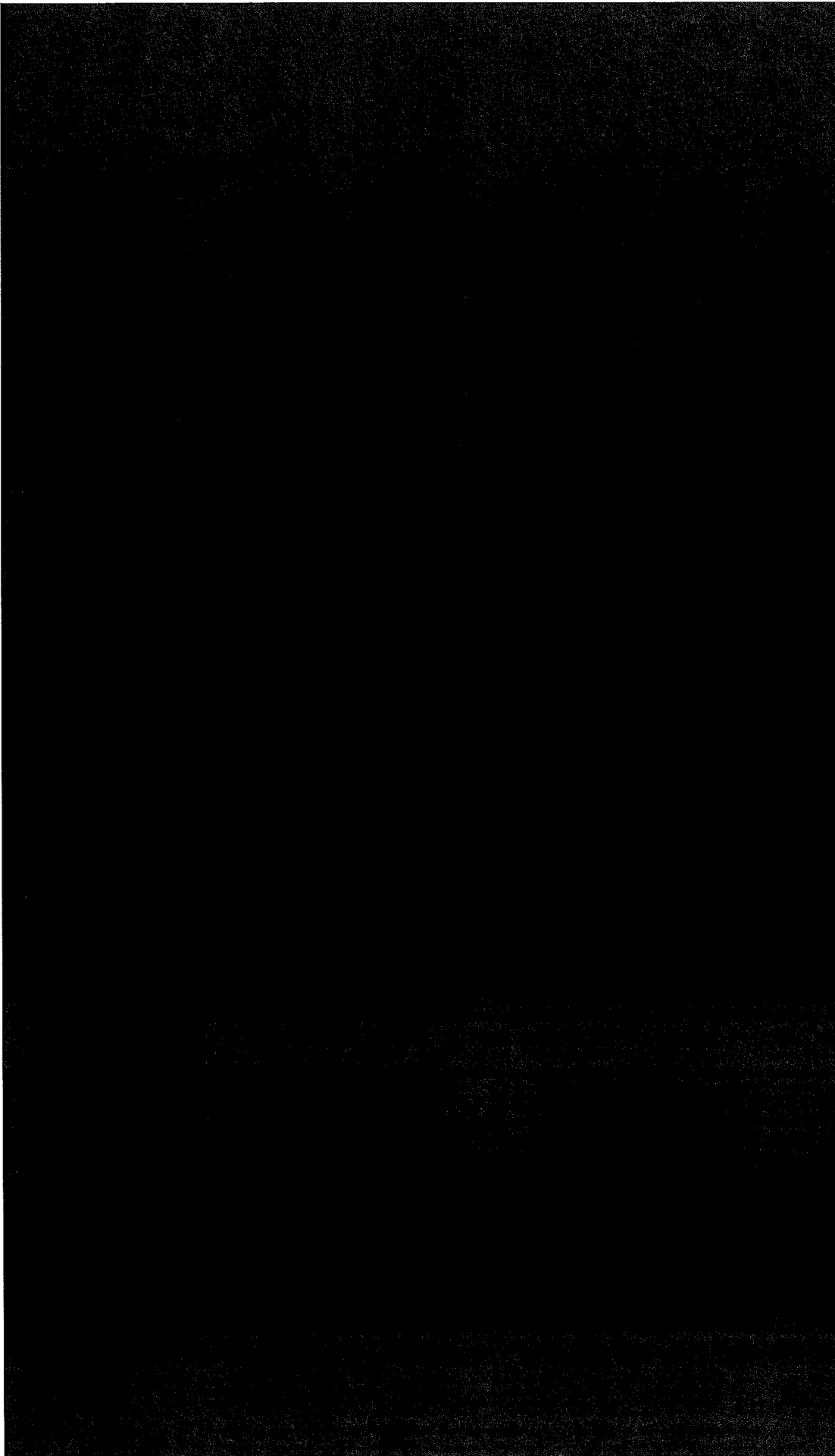
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ASSIGNED ATTORNEY: 0554 LEIGH E. TYSON

PROFORMA REPORT

FROM 01/01/01

THRU 05/31/16

CLIENT 07580

HCR MANOR CARE

LAST DATE BILLED 06/08/16

MATTER 61223

MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIDATE BILLED THRU

[REDACTED]

ASSIGNED ATTORNEY: 0554 LEIGH E. TYSON

PROFORMA REPORT

FROM 01/01/01 THRU 05/31/16

CLIENT 07580 HCR MANOR CARE LAST DATE BILLED 06/08/16
MATTER 61223 MCHS-KINGSTON - ELECTION APPEAL & SEPARATE ULP TRIDATE BILLED THRU

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4684581 06/08/16 0261 CHARLES P ROBERTS, III 1.5 540.00 1,116
L510 Appellate Motions/Submissions A103 Draft/Revise
Began drafting motion for attorney fees

4

4

4

4686818 06/10/16 0261 CHARLES P ROBERTS, III 0.6 216.00 1,584
L510 Appellate Motions/Submissions A103 Draft/Revise
Continued drafting of motion for attorney fees

4688120 06/10/16 0553 CLIFF H. NELSON 0.3 108.00 1,692
P250 Employee/Labor A103 Draft/Revise
Work on EAJA action.

4689790 06/13/16 0261 CHARLES P ROBERTS, III 1.0 360.00 2,052

THRU 05/31/16

LAST DATE BILLED 06/08/16

-- TIME VALUE TOTAL --	17.9	6.444.00
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ATTACHMENT C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
Nos. 14-1166 and 14-1200

MANORCARE OF KINGSTON PA,
LLC

Petitioner

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent

AFFIDAVIT OF CHARLES P. ROBERTS III

NOW COMES Charles P. Roberts III, who swears under oath as follows:

1. I am an attorney admitted and in good standing to practice in this Court. I have practiced law for 37 years, and during my entire career, my practice has been exclusively in the area of labor and employee relations. This practice has largely been before the National Labor Relations Board (Board) and the federal courts of appeals.
2. I assisted Clifford Nelson in representing ManorCare of Kingston, PA, LLC, in the unfair labor practice proceeding that is the subject of this case. I took the lead for our firm in preparing and presenting the

Company's arguments to the Board and in preparing and presenting the briefs and arguments to this Court.

3. The Company raised two separate and distinct defenses to the Board's decision, one substantive and the other procedural. Our primary contention was that the Board failed to apply its own governing precedent in evaluating the Objections that the Company filed to the representation election and that under these precedents, the Board should have set aside the election. Our procedural contention was that the Regional Director lacked the power to conduct the representation election because he was appointed by an improperly constituted Board. The relief sought under each contention was precisely the same, the vacating of the Board's unfair labor practice decision.
4. On May 20, 2016, this Court issued its Opinion, which granted the Company's petition for review based on the substantive contention that the Board failed to follow its own precedent. This Court rejected the Company's procedural argument regarding the Regional Director's authority.
5. Because the procedural argument rejected by this Court is separate and distinct from the substantive argument accepted by this Court, ManorCare does not seek to recover fees for time spent making the

procedural argument. Where time entries indicate that they are related to the procedural issue, they have been excluded from the Company's request. In recording the time I spent on certain tasks such as drafting the Company's briefs and preparing for oral argument, I did not differentiate between time spent on one issue and time spent on the other issue. Nevertheless, I have reviewed the briefs and time records and am able to closely estimate the percent of time spent on each issue. This estimate is based on the relative lengths of the arguments in the briefs, the complexity of the issues, and my recollection. My best estimate, which I believe to be very accurate, is that my time was divided as follows:

Task	Substantive Issue	Procedural Issue
NLRB Litigation	95%	5%
Petition for Review/ Initial Filings	7.1 hours	3.1 hours
Joint Appendix/ Opening Brief	85%	15%
Reply Brief	35%	65%
September 2015 Rule 28(j) Letter	0 hours	8.5 hours
Oral Argument	70%	30%
May 2016 Rule 28(j) Letter	0 hours	4.0 hours
Motion for Attorney Fees	100%	0%

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I have read this affidavit and state that it is true and correct and is based on my personal knowledge.

Dated this 20th day of June 2016.

/s/ Charles P. Roberts III